EDITOR'S NOTE

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No. 87-1162

Supreme Court, U.S.
FILED
JAN 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

ALICE CLISSURAS,

Plaintiff-Appellant,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

APPEAL FROM THE
COURT OF APPEALS OF THE
STATE OF NEW YORK

APPELLANT'S JURISDICTIONAL STATEMENT

ALICE CLISSURAS, pro se
Plaintiff-Appellant
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

57 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether plaintiff was properly deprived of her Constitutional right to counsel, as follows:

a. By the unilateral withdrawal of Defendant Union Attorney's representation of plaintiff;

b. By the subsequent refusal of over thirty consulted attorneys to represent plaintiff;

c. By the extraordinary steps taken and the tactics used by defendants to take advantage of plaintiff's limited knowledge of the laws and proceedings, by which actions the defendants, in effect, determine who is to be allowed her Constitutional rights; and

d. By the failure of the Courts below to protect the rights of a pro se plaintiff, who in this case is forced to represent herself?

2. Whether Dismissal of Complaint is Constitutionally, lawfully, and properly granted for defendants on the questions of discrimination, fraud, conspiracy, Constitutional deprivations, and breach of contractual and fiduciary duties, where plaintiff presents documentary evidence of the following facts:

a. Employment discrimination based on plaintiff's sex and religion, which was effected by defendants' discriminatory and fraudulent diminution of plaintiff's employment entitlements and benefits;

b. Defendants' false statements and misstatements concerning

the facts of plaintiff's employment and the laws pertaining thereto;

c. Conspiracy on the part of all defendants to fraudulently conceal the causes of action;

d. Defendants' failure to respond to plaintiff's claims;

e. Defendants' failure to present any evidence controverting plaintiff's documented claims;

f. Defendants' failure to present a proper defense;

g. Defendants' steadfast and continuing refusal to produce plaintiff's employment records, which refusal evidences the continuing conspiracy to conceal the discrimination, fraud, Constitutional deprivations, and breach of duties;

h. Defendants' grossly negligent acts in the maintenance of plaintiff's employment moneys

and their failure to take any remedial actions; and

i. Defendants' failure to act in the scrupulous good faith and trust requirements of their fiduciary capacities?

3. Whether plaintiff was properly deprived of her Constitutional right to a trial by jury, as follows:

a. By the actions of the Equal Employment Opportunity Commission and the New York State Division of Human Rights, both of which agencies did not even minimally investigate and did not allow a hearing of the claims herein; and

b. By the discretionary actions of the Courts below which dismissed the many issues of fact herein, including documented discrimination and fraud, without

a trial, without addressing the claims, and without requiring the defendants to respond to the claims?

4. Whether plaintiff was properly deprived of her Constitutional right of due process of law, as follows:

a. By the failure of the Appellate Courts below to issue signed orders;

b. By the failure of the Courts below to respond according to law to the defendants' fraud, which was brought to the attention of each Court by plaintiff's documented proof and evidence;

c. By the failure of the Courts below to address the claim of discrimination, which claim is not even mentioned in the orders of the Courts;

d. By the failure of each Court below to render an opinion and to give reasons for dismissal of complaint, thereby depriving plaintiff of the right of countering the Courts' positions and further depriving plaintiff of the right of perfecting an appeal; and

e. By the failure of the Courts below to make a record of court proceedings or the refusal to make a record available to plaintiff, refusal of plaintiff's request for access to docket and files, failure to allow reporting of decision, and failure to assist plaintiff pro se with procedural information?

5. Whether the Courts below committed manifest and reversible errors, as follows:

a. By the failure of the Courts to order an immediate trial of the many issues of fact raised by the complaint and the motions for dismissal, as required by law;

b. By the failure of the Courts to sufficiently consider the claims of discrimination, fraud, concealment, conspiracy, and breach, discretely, and then to render a determination as to each claim according to the Constitution, the laws, and the proof submitted;

c. By the failure of the Courts to address the sham and improper defense of defendants, that of the expiration of a four-month statute of limitations applicable to all of plaintiff's claims, and the failure to show that there is no four-month

statute of limitations applicable to discrimination, fraud, concealment, conspiracy, and breach;

d. By the failure to consider that a date and cause for accrual have not been stated;

e. By the failure to consider that defendants concealed the causes of action and continue to do so, that plaintiff documented the points in time when she discovered the causes of action and defendants' concealment, and that defendants have not shown by any proof that plaintiff was informed of the causes of action at the time of defendants' inferred date of accrual;

f. By the failure to consider that the discrimination did not consist of one isolated and distinct act;

g. By the failure to consider that not one of plaintiff's claims has staled as to any date, inferred, actual, concealed, or discovered; and

h. By the failure to consider that a dispute concerning the facts of the applicability of a statute of limitations requires an immediate trial according to law and is not subject to dismissal on motion?

ALL PARTIES AND THEIR ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.,

N.Y.S. Ct. of Ap., Mo. No.1166SSD74
N.Y.S.S.Ct. App. Div. 2d, No. 87603
N.Y.S.S.Ct. Kings Co., Index No. 20522/85

Plaintiff-Appellant, ALICE CLISSURAS, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

City Defendants-Appellees, CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of NY
Attorney for City Defendants-Appellees
Michael Adler, Asst. Corp. Counsel
100 Church Street
New York, NY 10007
(212) 566-4331

State Defendants-Appellees, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, and DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK

ROBERT ABRAMS, ESQ.
Attorney General of the State of NY
Attorney for State Defendants-Appellees
Anne Ehrenkranz, Asst. Atty. Gen.
120 Broadway
New York, NY 10271
(212) 341-2641

PARTIES AND THEIR ATTORNEYS (Continued)

Union Defendant-Appellee, PROFESSIONAL STAFF CONGRESS/CUNY

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs, Professional Staff Congress/CUNY
Attorney for Union Defendant-Appellee
25 West 43d Street
New York, NY 10036
(212) 354-1252

Union Attorney Defendant-Appellee, LEWIS ROSENBERG

BERGADANO, ZICHELLO, & BABCHIK, ESQS.
Attorneys for Union Attorney Defendant-Appellee
Ann McIntyre, Of Counsel
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALICE CLISSURAS,

Plaintiff-Appellant,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S JURISDICTIONAL STATEMENT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to Rules 10, 12, 13, and 15 of the Rules of the Supreme Court of the United States, appellant, Alice Clissuras, files this statement of the basis upon which it is contended that the Supreme

Court of the United States has jurisdiction to review the orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint, and the unsigned orders of the New York State Supreme Court, Appellate Division, Second Department, and the New York State Court of Appeals, affirming dismissal of the complaint herein.

OPINIONS BELOW

No opinion was delivered by the Courts and the Administrative Agencies below, and no reporting of decisions has occurred.

JURISDICTION

The decision of the Court of Appeals of the State of New York, dismissing plaintiff's appeal sua sponte, was issued and entered October 13, 1987. It consists of a short statement on a small piece of paper; it bears no signature;

and it is reproduced here in Appendix A, infra, p. 1a (hereinafter App. A, 1a). Subsequently, the decision was sent to plaintiff on what appeared to be Court stationery; and this copy, also, does not bear judicial signature (App. A, 2a).

The decision of the Appellate Division, Second Department, of the Supreme Court of the State of New York was issued and entered June 22, 1987. It was enclosed in a New York City Law Department back and was mailed by that Agency. It bears no signature (App. A, 3a-7a). Subsequently, a duplicate of this decision was mailed to plaintiff by the Court, which duplicate, also, does not bear signature.

The orders of the Supreme Court of the State of New York, Kings County, Special Term, dismissing the complaint, were entered on the 19th day of December, 1985 (Shaw, J.), as against the City

Defendants and the Department of Insurance Defendant; on the 2d day of January, 1986 (Bernstein, J.), as against Defendant Lewis Rosenberg; and on the 19th day of February (Hurowitz, J.), as against the State Defendants and Defendant Professional Staff Congress/CUNY. (App. A, 8a-12a; 13a-15a; and 16a-18a, respectively)

The Equal Employment Opportunity Commission did not investigate, did not hold a hearing, and did not issue a decision. The claims were filed with the EEOC June 20, 1985.

The New York State Division of Human Rights did not investigate, did not hold a hearing, and did not issue a decision. The claims were deferred to the SDHR on June 24, 1985.

GROUNDS FOR JURISDICTION OF SUPREME COURT

This appeal arises from an action for employment discrimination, civil rights violations, fraud, conspiracy, breach of contract, breach of fiduciary duty, and deprivation of Constitutional rights to due process, counsel, trial, and equal protection of laws. The order of the Court of Appeals of the State of New York, dismissing appeal, was entered October 13, 1987. A timely Notice of Appeal was filed on November 2, 1987, in the Court of Appeals of the State of New York, the Supreme Court of the State of New York, and this Court (App. A, 19a-20a). The jurisdiction of this Court is invoked under the provisions of Amendments I, V, VII, IX, and XIV of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the following Constitutional and Statutory provisions:

1. AMENDMENT XIV to the United States Constitution, SECTION 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

2. AMENDMENT VII to the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." (Emphasis added.)

3. AMENDMENT V to the United States Constitution, in relevant part:

> "* * * nor shall any person * * * be deprived of life, liberty, or property, without due process of law; * * *."

4. AMENDMENT I to the United States Constitution, in relevant part:

> "Congress shall make no law * * * abridging the freedom of speech, * * * or the right of people * * * to petition the Government for a redress of grievances."

5. The right to appeal under the Federal and New York State Civil Rights Laws governing discriminatory employment practices.

6. The right to appeal under the Federal and State Constitutions and Laws for violations of the laws governing conspiracy, fraud, and breach of contract and fiduciary duty. And

7. The right to appeal to this Court for protection of the Laws for

pro se party, who is compelled to represent herself due to the refusal of over 30 attorneys to be retained and who is, therefore, disadvantaged in knowledge of the law and her rights under the law.

8. The right to appeal to this Court to address and correct injustices under AMENDMENT IX to the United States Constitution:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

STATEMENT OF THE CASE

Plaintiff, a City University of New York professor, brought this action to address the injustices of the unequal application of the laws and to recover for employment discrimination which resulted in the fraudulent diminution of her employment entitlements and benefits.

The nine defendants herein include plaintiff's college employer, pension system and board, union, attorney retained by union, and governmental overseer of pension systems.

Discrimination was practiced against plaintiff on the bases of her sex and religion. The acts of discrimination are many in number and span over the 34 years of employment at defendant New York City Technical College ("College"), a period of 34 years from September 1, 1948, to September 1, 1982, the effective date of her retirement.

The discrimination is systemic, invidious, and fraudulently concealed. It has not ended; it continues to date.

Due to the defendants' concealment of the causes of action, discovery thereof was severely impeded. Plaintiff discovered the discrimination and fraud long after retirement. Plaintiff discovered that similarly situated male and non-Christian teachers were receiving employment entitlements according to law, of which plaintiff has been fraudulently deprived.

Plaintiff set forth the facts of the claims according to which she is entitled to recover in a 33-page complaint (R. 69-101).* The claims of discrimination,

*Reference is to RECORD ON APPEAL, Vols. I and II, pp. 1-331 and 332-657, respectively, filed on appeal to Supreme Court of the State of New York, Appellate Division, 2d Dept. Volume III, pp. 658-901, was compiled by plaintiff for appeal to Court of Appeals of the State of New York and this Court. It has not been filed in this form, but as individual papers.

fraud, concealment, civil conspiracy, deprivations of Constitutional rights, and breach were fully alleged. On the three motions to dismiss the complaint, the many issues of fact were dismissed without a trial, without consideration of the claims, without consideration of the weight of plaintiff's documentary evidence, and without consideration of defendants' failure to controvert plaintiff's claims by response or by documentation. Only one of the three motions was placed on the record (R. 32-66). The motion record shows clearly that the defendants did not respond to the claims, that concealment of fraud continues, that the Court did not address the fraud, that a decision was made to dismiss the complaint on the day on which the motion papers were submitted, and that the many issues of fact were dismissed without a trial.

For proof of plaintiff's claims, countless documents were attached to the

affidavits in opposition (R. 213-275, 342-418, 464-469, 544-554, and 608-636), attesting to defendant's violations herein.

On the other hand, the defendants did not submit even one paper controverting plaintiff's claims and instead relied on fraudulent statements and, in some instances evidence that had been altered. Due to the volume of wrongs, plaintiff sets forth only limited illustrations of this point. In a letter from the Defendant State Department of Insurance, the statement is made that "* * * the procedures followed by the Retirement System are in conformity with the applicable statutes as contained in the New York City Administrative Code." This is the fraud upon which plaintiff was to rely to her detriment since the Code is not the law applicable to Board of Higher Education faculty (R. 321). In a letter

from the Defendant Pension System, the correct pension plan is identified; namely, the Career Pension Plan. However, the fraud here is that the Plan was applied to only 20 years of plaintiff's 34 years of Career Plan service (R. 348).

The Defendants College and Pension System steadfastly refuse, to date, to give plaintiff a copy of her records. In a letter from Defendant College, which essentially consists of misinformation, one of the points of misinformation was corrected, by hand alteration, for the purpose of supporting the motion to dismiss (R.509). The letter was without alteration when it was first mailed to plaintiff (R. 554).

From the time of plaintiff's retirement forward, plaintiff discovered the many causes herein piecemeal and from different sources. Finally, in July of 1985, plaintiff received a communication

from Defendant City University which, in effect, certified that plaintiff had retired in 1977, instead of 1982 (R.482). Plaintiff then served the summons and complaint in this action (R. 67, 121) on or about August 28th, 1985. The Defendant Union Attorney served his answer on September 13th, 1985, by which issue was joined (R. 102).

By three orders, the Supreme Court, Kings County, dismissed the complaint as against all of the defendants. The three orders did not address the claims. The claim of discrimination has not even been mentioned in the orders and decisions of all of the Courts below.

The Courts below did not state date and cause of accrual, as the defendants also did not state.

The Courts below did not consider each cause and render a decision as to each.

The Courts below did not render opinions, by which plaintiff is deprived of her right to respond.

The Appellate Division issued Decision & Order (one paper) which illustrates the above points and, in addition, clearly shows the dismissal of issues of fact without a trial. The Court states, "Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits." (App. A, infra, 5a). The Court thereby dismissed, on appeal, plaintiff's claims, including fraud, without a trial, as characterizations, completely disregarding the facts of the claims as they were fully set forth in the complaint and as they were fully documented in 657 pages of the RECORD to that Court.

As to Defendants Union and Union Attorney, the Appellate Division continues, in the next two paragraphs, to decide issues of fact which have not been tried and which have been documented by plaintiff and not controverted by defendants (App. A, infra, 6a-7a).

The Court of Appeals of the State of New York did not respond to the many injustices herein by other than a dismissal of the appeal sua sponte.

The decisions of the two Appellate Courts were not signed by the judiciary and remain unsigned.

As to this statement of plaintiff's case, the strictures of conciseness forced plaintiff to set forth brief illustrations of the many injustices committed invidiously herein over the span of 34 years and brief illustrations of the deprivations of rights, which also have been countless.

STATEMENT OF SUBSTANCE

Plaintiff's claims have not been addressed by the defendants and have not been addressed by the Courts. In addition, the claims have not been investigated, heard, or tried by any of the parties or agencies required by the Constitution and by law to do so.

The issues herein are issues of fact as the complaint, the questions presented for review, the lengthy facts of the case, and the 901 pages of the RECORD ON APPEAL so prove.

The defendants attempt by sham, frivolous, and unconstitutional argument of application of a four-month Statute of Limitations to all of plaintiff's claims, including discrimination and fraud, to dismiss the complaint.

As to this, in Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), the Court

held the four-month limitation to be unconstitutional in like deprivations to the instant case.

Further, in Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 769 (1983), the Court found that the defendant discriminated against women and enjoined the Board from continuing such discrimination. The Melanie decision encompasses all of plaintiff's years of employment, the Board is a defendant herein, and it continues to discriminate as the July, 1985 communication shows (R.482).

Further, the letter from Defendant Department of Insurance (R. 321), referred to above on p. 12, is dated March 27, 1985. The copy of this letter which was mailed to plaintiff shows June 7, 1985, as the date (R. 405). Plaintiff received the letter after the June 7 date. It appears that the defendant

altered the date to improperly and falsely support dismissal argument.

Still further, the New York State C.P.L.R. provides in §214(2) for a three-year limitations period for liability created or imposed by statute, which has been consistently applied by the Courts in civil rights employment discrimination actions and which was applied in Pauk, supra.

The defendants use sham arguments and avoid the limitations provisions of the C.P.L.R. for fraud and breach of contract. They avoid the provisions for revival by acknowledgment or payment and they avoid the effects of discovery of fraud on the limitations period.

All of plaintiff's claims are not barred by any limitations period. The avoidance of defendants of the dates and causes of accrual attests to this.

For the reasons stated above and in all the papers submitted heretofore, plaintiff submits that this appeal brings before this Court substantial and important Constitutional questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Plaintiff should be allowed a meaningful hearing of the issues herein. Denial of such hearing, to date, represents a gross injustice and a gross deprivation of Constitutional rights.

All of the Courts below dismissed material issues of fact, which should not have been decided on motions to dismiss and dismissal should not have been upheld by decisions which are not signed by the judiciary.

The total lack of response to the injustices herein is unconscionable

WHEREFORE, plaintiff-appellant prays that her Constitutional and lawful right of appeal to this Court be noted. Moreover, plaintiff-appellant seeks the protection of this Court according to the Constitution and the laws for the many causes of action herein.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 871-6171

APPENDIX A

Mo. No. 1166 SSD 74

Alice Clissuras,

Appellant,

vs.

City of New York, et al.,

Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

DIVISION COURT OF APPEALS OCT 13 1987

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirteenth day of October A. D. 1987

PRESENT, HON. SOL WACHTLER
Chief Judge, presiding.

Mo. No. 1166 SSD 74

Alice Clissuras,

Appellant.

vs.

City of New York, et al.,

Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

(Seal of the Court)

/S/ Donald M. Sheraw

Donald M. Sheraw
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT
____AD2d____ Argued March 5, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

3774E
3775E
3776E

Alice Clissuras, appellant, v City of New York, et al., respondents.

DECISION & ORDER

Alice Clissuras, Brooklyn, N.Y., appellant pro se.

Peter L. Zimroth, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Michael S. Adler of counsel), for respondents City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York.

Robert Abrams, Attorney-General, New York, N.Y. (Anne Ehrenkranz of counsel), for respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Department of Insurance of the State of New York.

D. Nicholas Russo, New York, N.Y., for respondent Professional Staff Congress/ CUNY.

Bergadano, Zichello & Babchick, New York, N.Y. (Ann Teresa McIntyre of counsel), for respondent Lewis Rosenberg.

In an action, inter alia, for an accounting of pension payments and to recover damages for breach of contract, the plaintiff appeals from (1) an order and judgment (one paper) of the Supreme Court, Kings County (Shaw, J.), dated December 18, 1985, which, upon their motions, dismissed the complaint insofar as it is asserted against the defendants City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York and the Department of Insurance of the State of New York, (2) an order of the same court (Bernstein, J.) dated December 24, 1985, which, upon his motion, dismissed the complaint insofar as it is asserted against the defendant Lewis Rosenberg, and (3) an order of the same court (Hurowitz, J.) dated February 14, 1986, which, upon their motion, dismissed the complaint insofar as it is asserted against the defendants Board of Higher

Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY.

ORDERED that the order and judgment and the orders are affirmed, without costs or disbursements.

The plaintiff's claims against the public agency defendants, while not brought in the form of a proceeding pursuant to CPLR article 78, are governed by the four-month Statute of Limitations in CPLR 217 (see, Press v Monroe County, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224). Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits. The plaintiff retired in 1982 and the determination as to the amount of her pension was approved by the defendant Teachers' Retirement Board of the City of New York on January 20, 1983. This action, commenced more than two years later, is thus time barred as to the public agency defendants.

The claims against the defendant union, the Professional Staff Congress/ CUNY, were also properly dismissed. The plaintiff's various allegations of wrongdoing by the union are in essence a claim for breach of the duty of fair representation. The evidence in the record shows that the union's staff met with the plaintiff to attempt to resolve issues concerning her pension benefits and at one point arranged for representation by an outside attorney before concluding that her claims were without merit. While the plaintiff disagrees with the union's judgment as to the validity of her pension claims, she has not shown that the union's conduct was arbitrary, discriminatory or in bad faith (see, Matter of Civil Service Bar Assn. v City of New York, 64 NY2d 188; Symanski v East Ramapo Cent. School Dist., 117 AD2d 18).

We agree with the determination that the plaintiff's complaint fails to state a cause of action against the defendant Rosenberg, an attorney to whom the plaintiff was referred by the union in February 1983 for assistance in bringing a lawsuit against the defendant Teachers' Retirement Board of the City of New York. The plaintiff failed to

allege facts sufficient to show that Rosenberg did not exercise "that degree of skill commonly exercised by an ordinary member of the legal community, resulting in damages to the client." (Saveca v Reilly, 111 AD2d 493). Rosenberg withdrew as the plaintiff's attorney after arranging for her consultation with an actuary regarding her claim and after advising her of the four-month Statute of Limitations. Any damages caused by the plaintiff's failure to timely bring this action were not attributable to his conduct.

Finally, we have reviewed the remaining contentions of the plaintiff and find them to be without merit.

BRACKEN, J.P., LAWRENCE, KUNZEMAN and SPATT, JJ., concur.

ENTER:

MARTIN H. BROWNSTEIN
Clerk

June 22, 1987 CLISSURAS v CITY OF NEW YORK 3774E 3775E 3776E

At a Special Term, Part 1 of the Supreme Court of the State of New York, County of Kings at the Courthouse, Civic Center, Brooklyn, New York on the 18 day of December, 1985.

PRESENT: HON. JAMES H. SHAW, JR.
JUSTICE

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, LEWIS ROSENBERG,

Defendants.

PROPOSED JUDGMENT

Index No. 20522/85

----------x

Plaintiff herein having commenced this action for $500,000 in compensatory damages and $2,000,000 in punitive damages and for a judgment directing defendants to undertake an accounting of plaintiff's pension moneys; and

Defendants City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York (City defendants) having moved pursuant to CPLR §3211(a)(5) to dismiss the complaint because the action is barred by the statute of limitations; and

Defendant Department of Insurance of the State of New York (Insurance Department) having moved pursuant to CPLR §§ 3211(a)(2), 3211(a)(5), and 3211(a)(7) to dismiss the complaint because the Court lacks subject matter jurisdiction of plaintiff's claim for damages, the action is barred by the statute of limitations, and the complaint fails to state a cause of action and

The aforementioned motions to dismiss having been heard by the Honorable James H. Shaw, Jr., at a Special Term, Part 1 of this Court, held at the Courthouse located at the Civic Center, Brooklyn, New York on November 13, 1985; and

The Court having considered the said motions and written memoranda and oral argument in support thereof, as well as plaintiff's written and oral responses thereto;

NOW, upon reading and filing the Notice of Motion to Dismiss of the City defendants undated and the supporting affidavit of Suzanne Lank dated October 10th, 1985 and all exhibits annexed thereto, the Notice of Motion to Dismiss of the Insurance Department undated and the supporting affidavit of Sue Barnett Bohringer sworn October 15, 1985 and all exhibits annexed thereto, plaintiff's affidavit in opposition to the City defendants' motion to dismiss, and all exhibits annexed thereto, plaintiff's affidavit dated November 6, 1985 in opposition and affidavit in opposition of Alice Clissuras dated November 7, 1985 in opposition to the Insurance Department's motion to dismiss and all exhibits annexed thereto, and the affirmations of Suzanne Lank both dated November 12, 1985 in reply to plaintiff's affidavit responding to the City defendants' motion to dismiss; and plaintiff having appeared pro se; City defendants having appeared by FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, and the Insurance Department having appeared by Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer; and upon the written

memorandum decision of this Court dated November 19, 1985;

NOW, upon the motion of FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, Assistant Corporation Counsel, attorney for City defendants, it is

ADJUDGED that plaintiff's causes of action against both the City defendants and the Insurance Department are barred by the four-month statute of limitations; and the complaint is dismissed as to the City defendants and the Insurance Department, and the action is severed accordingly.

ENTER:

/S/ James H. Shaw Jr.

J.S.C.

/S/ Anthony N Durso
Clerk

Dated:

(Stamped)
Filed December 19, 1985

MEMORANDUM

SUPREME COURT

ALICE CLISURRASM
Plaintiff,
vs.
CITY OF NEW YORK, et al.,
Defendants.

By James H. Shaw, Jr. J.S.C.
Dated November 19, 1985
Index No. 20522/85

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsequent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.

Settle Judgment

/S/ James H. Shaw Jr.
J.S.C.

MEMORANDUM

SUPREME COURT : KINGS COUNTY

Alice Clissuras,
Plaintiff,
vs.
City of New York, et al.,
Defendants.

By Bernstein, A.D. J.
Dated December 24, 1985
SPECIAL TERM PART I
Index No. 20522/85

The plaintiff brings this action against all of the defendants alleging conspiracy to defraud her from the true amount of pension that she has earned. She claims that the co-conspirator defendants have concealed from her the true amount of her pension, the rights to which she is entitled and the fact that certain increments to which she is due were not included in her pension. The defendant Rosenberg moves to dismiss the complaint on the grounds that it fails to set forth a cause of action. The defendant Rosenberg is an attorney who was retained by the defendant on or about February 6, 1983 by the Professional Staff Congress/CUNY, the union representing the plaintiff. Thereafter, on or about February 15, 1983 the defendant

Rosenberg and the plaintiff met in his office. Thereafter, on or about April 5, 1983 the defendant Rosenberg wrote to the plaintiff withdrawing as her attorney. In the brief submitted by the plaintiff she details the claim against the defendant Rosenberg as follow:

> "Defendant Rosenberg met with plaintiff once on February 15, 1983. She detailed the problems as she knew them at that time and she supported this with the documentation which she had at that time. Defendant Rosenberg did not discuss pleaintiff's (sic) with her; he did not discuss plaintiff's rights or choices; he did not give her any direction. At the end of the meeting, he told her to get an actuary."

It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg.

She alleges in her conclusion that the causes of action against Rosenberg

are "concealment of the causes of action, conspiracy, and breach of contract and fiduciary duty, all of which occurred upon contract with defendant Rosenberg and after such contract and are continuing to date."

Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

The motion is granted.

ENTER,

/S/ ADB

J. S. C.

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Kings, at the Courthouse, Civic Center, Brooklyn, New York, on the 14 day of February, 1986

PRESENT: HON. BARRY HUROWITZ, JUSTICE.

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

ORDER

Index No. 20522/85

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants.

----------x

UPON the notice of motion and the affidavit of Sue Barnett Bohringer, dated November 26, 1985, together with the exhibits attached thereto, in support of the motion of defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (the "City University defendants") to dismiss the complaint,

the affidavit of plaintiff, dated December 16th, 1985, together with the exhibits attached thereto, in opposition to the motion of the City University defendants, the notice of motion and the affirmation of D. Nicholas Russo, dated December 6, 1985, together with the exhibits attached thereto, the affidavit of Beryl Weinberg, dated December 9, 1985, in support of the motion of defendant Professional Staff Congress/CUNY to dismiss the complaint or, in the alternative, for summary judgment, the affidavit of plaintiff dated December 20th, 1985 in opposition to the motion of Professional Staff Congress/CUNY, the reply affirmation of D. Nicholas Russo, dated December 19, 1985, together with the exhibits attached thereto, in further support of the motion of Professional Staff Congress/CUNY, and oral argument having been heard on December 20, 1985, it is

ORDERED that the motion to dismiss of the City of University defendants is granted and the action is severed accordingly and it is further

ORDERED that the motion to dismiss of defendant Professional Staff Congress/

CUNY is granted and the action is severed accordingly.

ENTER

/S/ Barry Hurowitz

J.S.C.

STATE OF NEW YORK
COURT OF APPEALS

- - - - - - - - - - - - - - - - - x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- - - - - - - - - - - - - - - - - x

Ct.of Ap. Mo.No. 116/SSD74

App.Div.2d No.87603 3774E-3776E

Kings Co. Clerk's Index No.20522/85

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alice CLISSURAS, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States, from an order of the Court of Appeals of the State of New York, dismissing appeal,

entered October 13,1987, and from all orders of the Courts below relevant thereto.

This appeal is taken pursuant to U. S. Const., Amend. I, Amend. IV, Amend. V, and Amend. VII; N.Y.S. Const., Art. I, §2, §8, and §11; Deprivation of Constitutional Rights of Due Process, Trial, Counsel, Speech, and Equal Protection of Laws.

DATED: November 2, 1987.

ALICE CLISSURAS
Plaintiff-Appellant
P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

(Affidavit of Service attesting that on November 2, 1987, the above Notice of Appeal was served on each of the parties herein required to be served and that on the same date, the Notice of Appeal was mailed, by registered mail, to the Court of Appeals of the State of New York and to the Supreme Court of the United States; a duplicate original was hand delivered to the Supreme Court of the State of New York, County of Kings, which which was duly stamped: FILED
1987 NOV 2 PM 2:17
KINGS COUNTY CLERK)

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

87-1162 (2)

Supreme Court, U.S.
FILED
JAN 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

RECORD ON APPEAL

VOLUME II OF THREE VOLUMES: PAPERS ON APPEAL TO APP.DIV., 2d DEPT. (pp. 332-657)

PETER M. ZIMROTH
Corporation Counsel of the City of New York
Attorney for City Defendants-Respondents
100 Church Street
New York, NY 10007
(212) 566-6458

ROBERT ABRAMS
Attorney General of the State of New York
Attorney for City University and Insurance Department Defendants-Respondents
120 Broadway
New York, NY 10271
(212) 341-2641

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

D. NICHOLAS RUSSO
Attorney for Defendant-Respondent Professional Staff Congress/CUNY
25 West 43d Street
New York, NY 10036
(212) 354-1252

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant-Respondent Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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NOTE: There are nine defendants with four legal representations. All defendants made motions to dismiss the complaint which were heard at three, separate hearings: November 13, 1985 (City Defendants and Insurance Department Defendant); December 16, 1985 (Defendant Rosenberg); and December 20, 1985 (City University Defendants and Defendant Union). Thus, there are three Notices of Appeal. The Appellate Division, Second Department, granted plaintiff's request to consolidate the three appeals into one for the appellate proceedings.

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ALL PARTIES AND THEIR
ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.

N.Y.S. Ct. of Ap., Mo. No.1166SSD74
N.Y.S.S.Ct. App. Div. 2d, Nos. 3774E-3776E
N.Y.S.S.Ct. Kings Co., Index No. 20522/85

Plaintiff-Appellant, ALICE CLISSURAS, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

City Defendants-Appellees, CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of NY
Attorney for City Defendants-Appellees
Michael Adler, Asst. Corp. Counsel
100 Church Street
New York, NY 10007
(212) 566-4331

State Defendants-Appellees, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, and DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK

ROBERT ABRAMS, ESQ.
Attorney General of the State of NY
Attorney for State Defendants-Appellees
Anne Ehrenkranz, Asst. Atty. Gen.
120 Broadway
New York, NY 10271
(212) 341-2641

Union Defendant-Appellee, PROFESSIONAL STAFF CONGRESS/CUNY

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs, Professional Staff Congress/CUNY
Attorney for Union Defendant-Appellee
25 West 43d Street
New York, NY 10036
(212) 354-1252

Union Attorney Defendant-Appellee, LEWIS ROSENBERG

BERGADANO, ZICHELLO, & BABCHIK, ESQS.
Attorneys for Union Attorney Defendant-Appellee
Ann McIntyre, Of Counsel
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

CLISSURAS, AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS, PP. 332-341

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- : AFFIDAVIT IN OPPOSITION TO NOTICE OF MOTION TO DISMISS COMPLAINT

CITY OF NEW YORK, et al., :

Index No. 20522/85

Defendants.:

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

ALICE CLISSURAS, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action, and I am representing myself in this action, to my disadvantage, due to the unwillingness of attorneys to represent me.

2. I make this affidavit in opposition to the motion to dismiss the complaint made by the defendant Department of Insurance of the State of New York (hereinafter "Insurance Department") on the grounds that the complaint states causes of action against the Insurance Department; that the causes of action are not barred by any Statute of Limitations; that this Court has subject matter jurisdiction in this matter against the Insurance Department; and that I oppose statements to

which Sue Barnett Bohringer, Esq., attorney for defendant Insurance Department, attests in her affidavit in support of motion and sets forth in her memorandum of law in support of motion; and that I raise questions as to the completeness and correctness of exhibits attached to her affidavit in support.

3. The causes of action are set forth in detail in the complaint. To briefly state the central cause of action, I set it forth as follows: I was employed as a teacher at New York City Technical College for 34 continuous years from September 1, 1948, to my effective date of retirement, September 1, 1982. Upon information and belief, I was deprived of my maximum pension benefits unlawfully, fraudulently, improperly, negligently, conspiratorially, and discriminatorily; and the central basis for this is that my pension was calculated for 29 years of service in the place and stead of the 34 years of service which I served and earned. The complaint is attached at the end hereof as Exhibit Q.

4. As to defendant Insurance Department and the causes of action, the complete file of letters is attached hereto in Exhibits A through M, as follows:

a. Letter dated April 5, 1984,* and attached as Exhibit A. In this letter to the Insurance Department, I presented a detailed account of the pension problems organized in four areas as I knew them to be as of that date. Each of the four areas was introduced by a descriptive account of the problems of the area and documentation was attached to each area to support the

*On page 24 of the complaint, the date is incorrectly typed as April 5, 1985. At all other times the date is typed correctly. Plaintiff requests the indulgence of the Court and all parties herein for this error.

statements made. Attorney for defendant Insurance Department includes only the letter of transmittal in her Exhibit C which is attached to her affidavit in support of the Insurance Department's motion. She does not include any of the narratives of the problems and she does not include any of the documentation. In addition, she does not make any reference to the documentation. The Insurance Department has never answered this letter.

b. Letter dated April 19, 1984, and attached as Exhibit B. The Insurance Department acknowledged receipt of the complaint, assigned file No., and indicated it would be processed. It never was.

c. Letter dated April 30, 1984, and attached as Exhibit C. After sending the April 5 complaint letter, I received a letter from the New York State Employees' Retirement System which provided proof of membership to September, 1953. Defendants Teachers' Retirement System of the City of New York and Insurance Department maintain to date that I did not hold membership in any public pension system during the years 1951-1953.

d. Letter dated June 7, 1984, and attached as Exhibit D. I sent a follow-up letter to the Insurance Department indicating that I had not received a response to my April 5, 1984, letter.

e. Letter dated August 13, 1984, and attached as Exhibit E. Since I had not received a reply by August, 1984, I enlisted the assistance of Congressman Stephen Solarz. On August 13, the Consumer Service Bureau of the Insurance Department, sent Congressman Solarz a letter to inform him that due to the complexity of the complaint he was referring it to Mr. James Gardiner, Supervising Actuary of the Life Bureau of the Insurance Department for his review and determination.

f. Letter dated August 29, 1984, and attached as Exhibit F. Mr. Gardiner sent Congressman Solarz a letter informing him that my pension was correctly calculated and that all my questions had been completely and correctly answered. No specific complaint raised by me in my April 5, 1984, letter was addressed by Mr. Gardiner in this letter. No specific response is therein contained, only generalizations.

g. Letters dated October 8, 1984, and December 12, 1984, and attached as Exhibits G and H, respectively. On October 8, I wrote to Ms. Mary Griffin, Executive Assistant to the Superintendent of the Insurance Department, for answers to the pension questions and on December 12, I sent a follow-up letter since she had not replied.

h. Letters dated December 12, 1984, and January 31, 1985, and attached as Exhibits I and J, respectively. On December 12, I sent a letter to Mr. James Corcoran, Superintendent of Insurance, listing five questions as examples of the many pension questions which were still unanswered. In her January 31 letter, Ms. Griffin responded to those five questions; however, her responses did not answer the questions at all. For example, Ms. Griffin does not answer the first question of why my pension benefit was not calculated on the basis of a 30-year allowance. For a second example, Ms. Griffin states that 2-1/2 years of my 34 years of City service had to be purchased as outside service because I did not hold membership in any retirement system during the years 1951-1953. In making such response, Ms. Griffin disavows the New York State Retirement and Social Security Law, disavows the certification of my service by the Teachers' Retirement Board of the City of New York as 34 years of New York City service, disavows the New York State Employees' Retirement System's letter which certifies my membership in that public retirement system to 1953, and disavows the statement on the application form of the Teachers' Retirement System of the City of New York which in accordance with New York State law provides for immediate and automatic credit for service which was rendered during which employment one became a member of Teachers' Retirement System. Male and/or non-Christian colleagues were given automatic credit for service at New York City Technical College for years during which they made no contributions to any pension system.

i. Letter dated February 25, 1985, and attached as Exhibit K. On February 25, I sent a letter to Mr. Corcoran in which, among other things, I set forth my refutations of Ms. Griffin's responses in her January 31, 1985, letter which refutations were supported by documentation. This documentation has been enclosed on several occasions in my correspondence with the Insurance Department. The attorney for

defendant Insurance Department not only does not acknowledge or refer to the documentation, she does not, in addition, include the documentation in her Exhibits. Her Exhibit E consists of my February 25, 1985, letter to Mr. Corcoran to which I attached 7 enclosures, including the letter from the New York State Employees' Retirement System, the relevant portion of Teachers' Retirement System's application form providing for automatic credit for prior service, and the Teachers' Retirement Board's evaluation of my service as (in effect) 34 years of New York City service. Attorney Bohringer does not include the enclosures in her Exhibit E; she merely shows the letter. Attorney Bohringer, as does the Insurance Department, disavows the proofs which I included in my letters and makes absolutely no references to them. I placed handwritten notes on Ms. Griffin's responses to draw attention to the documented refutations; Attorney Bohringer characterizes this as my refusal to accept the fact that my questions had been answered.

j. Letter dated June 7, 1985, and attached as Exhibit L. In this letter, Mr. Terence Lennon, Chief of the Life Insurance Bureau, responded for Mr. Corcoran to inform me that since all my questions had been answered and since my pension benefit was correct, no useful purpose would be served in meeting with me. The Insurance Department has not answered my April 5, 1984, letter and has not granted my many requests for a meeting to discuss the many issues. This June 7 letter is the last letter sent to me by the Insurance Department. This same letter is Attorney Bohringer's Exhibit H; however, in her Exhibit, the date on the letter is March 27, 1985, and not June 7, 1985, the actual date of this final letter.

i. Letter dated July 1, 1985, and attached as Exhibit M. This was my last letter to the Insurance Department, making a last attempt to get answers.

5. The attorney for defendant Insurance Department perpetuates the incorrect statements made by Mr. Gardiner in his August 29, 1984, letter to Congressman Solarz that all of my questions have been answered completely and correctly by the Teachers' Retirement System (Exhibit F, p. 2) and by Ms. Griffin in her letter of January 31, 1985, to me in which she states

that the answers had been supplied to me in correspondence with the Retirement System (Exhibit J, p. 2) and by Mr. Lennon in his June 7, 1985, final letter (Exhibit L), that all questions raised in my April 5, 1984, letter have been answered. A revie of Exhibits A - M shows that these statements are not correct.

6. As to my questions having been answered by the Teachers' Retirement System, as indicated above, such statemen are also incorrect. On January 19, 1984, I wrote a letter to Mr. Wallace Sullivan, Executive Director of the Teachers' Retirement System in which I listed 25 questions regarding my pension, to which I requested answers at a meeting which I was requesting in the same letter. (See Exhibit N attached hereto. The meeting was held with Mr. Sullivan and with Mr. Jonathan Schwartz, Chief Actuary, and Mrs. Claire Moses, Assistant Director, in attendance. At the end of the meeting, I requeste written responses to the 25 questions since not all the questio had been answered. Mr. Sullivan sent me a letter dated May 30, 1984, in which he set forth to do this. (See Exhibit O attache hereto.) As to the first five questions, which concerned the calculation of the pension benefit directly, Mr. Sullivan state that Mr. Schwartz will be writing to me in a separate letter wi written responses to my questions 1 through 5. (See Exhibit O, p. 2.) Mr. Schwartz has not answered those questions to date. Yet, Mr. Gardiner, Ms. Griffin, and Mr. Lennon of the Insurance Department and the attorney for the Insurance Department persis that all questions have been answered in correspondence with the Retirement System.

7. The questions I raise regarding my pension benefits are many in number and complex in nature. The most complete presentation of the problems is my letter of April 5, 1984, to the Insurance Department (Exhibit A herein). This letter has not been answered by the Insurance Department other than by the comments to the effect that all my questions have been answered correctly and completely. The Insurance Department does not provide evidence of the correctness or of its investigation. In addition, the Insurance Department has not ever made any statements as to the correct pension plan for my service and has not shown how the pension was calculated correctly; the Insurance Department has not made any response to the many errors in my Statements of Accounts, other than to say that all errors have been corrected; the Insurance Department has not responded to the documentation which I have supplied on several occasions as to the improper methods by which credit for my prior service was handled; and the Insurance Department has made no response to the procedural errors presented in my April 5, 1984, letter.

8. The defendants have joined conspiratorially to fraudulently conceal, among other items, the correct pension plan which applies to my service and its correct calculation. None of the defendants has stated the correct plan for my circumstances and its calculation. The attorney for defendant Insurance Department does not mention the pension plan which is the pivotal wrong on which all other wrongs in this action connect.

9. The Teachers' Retirement System, in response to my inquiries about the calculation of my pension, responded on separate occasions with three different versions of the pension calculation, each of which includes errors and each of which is not calculated for a thirty-year retirement. These three versio were sent to the Insurance Department in my first letter dated April 5, 1984 (Exhibit A, Attachments 1, 3, and 4) and in my February 25, 1985, letter to Mr. Corcoran (Exhibit K, Enclosures 4, 6, and 7). Mr. Corcoran has never responded in this matter; the Insurance Department has never responded to the three pensio calculations and which, if any, is the one correctly calculated. The attorney for defendant Insurance Department makes no reference to the attachments and enclosures and she did not include them in her Exhibits.

10. The limitations of written arguments make it very difficult to deal with all the problems in this complex matter. That is why a hearing is essential. The Insurance Department would not grant a meeting, despite my requests and the injustice of such denial.

11. Each area of problems presented in my letter of April 5, 1984, requires lengthy discussion and documentation. However, each area raises important questions on the problems of my pension benefits. In deference to constraints of time and space, I set forth only as an illustration one of the problems i the other areas; specifically, the problems with the Statements of Accounts. The Statements are almost incomprehensible.

My 1970 Statement of Accounts was sent to me for the first time in Mr. Sullivan's letter of September 7, 1983. This was a newly prepared statement and not a copy of the Teachers' Retirement System's records. In his letter of May 30, 1984, Mr. Sullivan explains that on that Statement, the two figures $14,985.64 and $5,925.90 which appear on the "Miscellaneous" line represent net transfer of my contributions from the New York City Employees' Retirement System for Annuity and I.T.H.P., respectively (Exhibit O, p. 2, Item No. 9). A letter from the New York City Employees' Retirement System shows the amount of contributions transferred to be $15,675.66. (See Exhibit P, hereto annexed.) Again, this is referred to by all concerned as all errors have been corrected; however, there is no indication as to where the correction has been made. On the same Statement, the credits in the Tax Deferred Annuity Column equal $6,037.99 but in the summary at the bottom of the Statement are listed as $5,740.40. No one indicates where this second error has been corrected.

12. As set forth above in paragraph 4 j, the final letter from the defendant Insurance Department was dated June 7, 1985; the summons and complaint in this action were served on the Insurance Department on August 27, 1985.

13. In the June 7, 1985, letter, defendant Insurance Department stated that no useful purpose would be served in a meeting with plaintiff and thus would not agree to one. The

plaintiff has not been heard by the Insurance Department and her pension questions have not been answered. Plaintiff deserves her day in court. To do otherwise would be grossly unjust.

13. A memorandum accompanies this affidavit in which the issues are set forth and considered by plaintiff who is not an attorney and is pro se in this action out of necessity and not by choice.

14. The facts and circumstances in this matter point to, among many other causes of action, fraudulent concealment of plaintiff's pension benefits, conspiratorially, by defendants.

WHEREFORE, I respectfully request that the motion to dismiss the complaint be denied.

ALICE CLISSURAS

Sworn to before me this

day of , 1985.

CLISSURAS. EXHIBIT A. AFFIDAVIT IN OPPOSITION. PP. 342-371

April 5, 1984

New York State Department of Insurance
Agency Building One
Nelson A. Rockefeller Plaza
Albany, NY 12257

Gentlemen:

For some time now I have been having problems with New York City Teachers' Retirement System (hereinafter TRS). The problems are many and very difficult to describe in writing. TRS has never given me a copy of the pension plan; thus, the problems I describe are the ones I have been able to discover through my own research of the matters.

After 34 continuous years of teaching service at New York City Technical College, I retired as of September 1, 1982, while a member of TRS. On January 3, 1983, I received my first pension check without notice before or after receipt of the check as to the amount of my pension benefits, without any calculations, and without analysis of the benefits or summary of my pension moneys. Since January, 1983, I have been attempting to obtain answers to questions and to effect corrections of errors, without success.

Among the basic and serious problems, I include the following:

1. Errors in the calculation of the pension amount.

2. Errors on Statements of Accounts which have never been corrected, explained, and/or carried forward.

3. Errors involving credit for prior service.

4. Procedural errors.

As I neared the point of retirement, I went to TRS with questions; TRS would not answer <u>any</u> of my questions nor grant me any counseling. TRS told me to go to my Union for answers and counseling. My Union responded to me solely by answering any questions I put to the counselor. I called the CUNY pension officer several times in an attempt to arrange a meeting for counseling purposes; he was always too busy to meet with me and agreed to answer any questions I put to him on the phone. With no copy of a pension plan and very limited counseling, I had to make decisions on matters about which I knew very little. As a result of being referred to various people and various sources of information, conflicting information became a serious problem.

Detailed accounts of the above-mentioned problems follow.

The problems which I have presented herein are long-standing ones. Due to the complexity of the problems, it is not possible to be complete in the presentation of them and it is also very difficult to present them clearly. I have not been complete in an attempt t be clear and in an attempt to illustrate the problems rather than present them all at the expense of clarity.

Your due consideration of the matters in this letter will be appre ciated. I have an extensive file on these matters and if any addi documentation is needed I would be happy to supply it. I also wou happy to meet with a representative of the Department of Insurance your convenience to facilitate understanding and/or resolution.

After calling the Department of Insurance for information, I was t to send this complaint to the Albany address and that after a file number is issued the agency involved is given 28 days to respond.

Your consideration of this matter will be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201
(212) 875-6171

PROBLEM 1: Calculation of the Pension Amount

Two weeks after I received my first pension check, I went to 40 Worth Street in an attempt to have the amount explained. A clerk at TRS handed me the Report of Actuary which she took out of a folder. I was directed to several people for an explanation of the figures on the Report but no one would explain them. One gentleman to whom I was referred was incensed that the clerk had directed me to him and berated her for so doing.

As to the figures on the Report of Actuary (see Attachment No. 1), the amount for the Annuity is the amount which was left in my Annuity after taking a loan and excess; and the $310.56 is the actuarial equivalent of that amount. The ITHP figure is the total amount in ITHP and the $2,601.12 is the actuarial equivalent of the total. The Regular Pension figure is the one that I had questions about. The $28,273.35 does not total up according to the following elements:

1) Final Salary: $42,643
2) Service: 34 years of City service (see Attachment No. 2)
   20 years at half pay
   2 years before 1970 at 1.2%
   12 years after 1970 at 1.7%
3) Minus actuarial equivalent of 20-year ITHP
4) Minus actuarial equivalent of minimum accumulation
   (My 20th year was completed 9/1/68 which is prior to my rate fixation date of 11/1/68)

The amount arrived at for Regular Pension with the above elements is higher than the $28,273.15.

I requested a meeting with Mr. Wallace Sullivan, Executive Director, in order to get an explanation of the Regular Pension figure. He told me to see Mr. Jonathan Schwartz, Chief Actuary, for an explanation of the figures. Mr. Schwartz was too busy to meet with me but he agreed to send me an explanation (see Attachment No. 3).

As to Mr. Schwartz's February 7, 1983, explanation, I point out the following:

1) In No. (2) it should be 2 years at 1.2% and in No. (3) it should be 12 years at 1.7%

2) In No. (4) Mr. Schwartz did not use the ITHP after 20 years of service; he used the ITHP figure after 25 years of service.

3) In No. (5) Mr. Schwartz states that I had a deficit in the ASF; I took a loan and excess (the amount that exceeds the minimum accumulation) which indicates that there was no deficit. By adding the Annuity part of the pension and by subtracting the actuarial equivalent of the minimum accumulation, the minus amount is far lower than the $1,148.87 shown in No. (5).

Since Mr. Schwartz did not explain the Regular Pension figure, I began to seek counsel from experts. I did not get the assistance to which I think any member-contributor of a pension system and union is entitled; thus, I did a great deal of research on my own and kept up a dialogue with TRS through correspondence. At my insistence, Mr. Sullivan sent me an explanation of the calculation of the pension amount which incorporated the $28,273.15 figure (se Attachment No. 4). This explanation was included in a letter from Mr. Sullivan dated December 14, 1983. This was now the third set of figures received from TRS.

As to Mr. Sullivan's December 14, 1983, explanation, I point out t following:

1) In (b) it should be 2 years at 1.2% and in (c) it should be 12 years at 1.7%.

2) In (c) Mr. Sullivan states that the minimum accumulation is $20,144.09 based on his explanation at the bottom of the page. In Section B20-1.0 of the Administrative Code, it states that in the case of a twenty-year contributor who had completed twenty or more years of qualifying servi prior to his contribution rate fixation date the minimum accumulation for such contributor is defined as the actuar equivalent of an annuity equal to 12½% of his annual salar on the rate fixation date. On 11/1/68, I had twenty years 2 months of New York City service (see Attachment No. 2). The above definition of the minimum accumulation as set forth in Subparagraph (d) of Section B20-1.0 of the Code results in a substantially lower figure than the one shown in Mr. Sullivan's letter.

3) In (e) Mr. Sullivan uses the ITHP figure as of the 25-year date and not the 20-year date.

Finally, in all of the above calculations of the pension by TRS, there was a failure to provide for special allowance for thirty-yea retirement. Perhaps this problem is related to the above use of 25-year ITHP; diminishing the years by 5 would bring my total servi down to 29 instead of to the actual 34 years of service.

NOTE: The Annuity and ITHP figures used here are the ones used by TRS. These figures would be affected by the problems presen herein on Statements of Accounts and on Prior Service.

(PLEASE RETAIN THIS COPY FOR INCOME TAX PURPOSES)

REPORT OF ACTUARY

Attachment 1

To The Teachers' Retirement Board
of the City of New York:

12-1- 19 82

I hereby certify that in the event of the Service/Disability Retirement on September 1, 1982
of Alice Clissuras registered as an active member No. 130358 the following regular retirement
allowance may be granted to him/her under the provisions of law and on the basis of the mortality tables last approved by the Retirement
Board, with four per cent compound interest, with payments to begin immediately/on

Member's Date of Birth August 23, 1926 Salary Base Used $ 42,643

FUND FROM WHICH PAYABLE	Initial Reserve	Annual Amount	Monthly Amount
Annuity Reserve Fund	$ 4,286.24	$ 310.56	$ 25.88
Regular Pension	$ 390,257.05	$ 28,273.35	$ 2,356.11
I.T.H.P. Pension	$ 35,903.78	$ 2,601.12	$ 216.76
Pension Reserve Fund No. 1*	$ 426,160.83	$ 30,874.47	
TOTAL FIXED ALLOWANCE	$ 430,447.07	$ 31,185.03	$ 2598.75
Variable Annuity Reserve Fund	____ units	____ units	____ units
Variable Pension Reserve Fund	____ units	____ units	____ units
TOTAL VARIABLE ALLOWANCE	____ units	____ units	____ units

*Includes $ — which should be transferred from the Military Contribution Fund.

Figured by PK Date 12-1-82 Checked by [illegible] Date 12-1-82

FIRST CHECK PAID 12 31 82

Nathan Schwartz
CHIEF ACTUARY, RETIREMENT BOARD

SUPPLEMENTARY REPORT OF ACTUARY

On _____ 19__, the above named member filed in this office an election to have his/her allowance paid u
the provisions of Option No. _____ and nominated _____
his beneficiary. As a result of such election the following allowances are payable in lieu of those shown above.

Joint Date of Birth _____

FUND FROM WHICH PAYABLE	ANNUAL ALLOWANCE	MONTHLY ALLOWANCE
Annuity Reserve Fund	$ _____	$ _____
Regular Pension	$ _____	$ _____
I.T.H.P. Pension	$ _____	$ _____
Pension Reserve Fund No. 1	$ _____	
TOTAL FIXED ALLOWANCE	$ _____	$ _____
Variable Annuity Reserve Fund	_____ units	_____ units
Variable Pension Reserve Fund	_____ units	_____ units
TOTAL VARIABLE ALLOWANCE	units	units

Figured by _____ Date _____ Checked by _____ Date _____

FOR INCOME TAX PURPOSES ONLY
COST OF OUTSIDE SERVICE $ 25015.84
CITY CONTRIBUTION PRIOR TO 1939 $ _____
MEMBER'S TOTAL CONTRIBUTIONS $ _____
(CONSIDERATION PAID)

UNIT VALUE AT DATE OF RETIREMENT _____

CHIEF ACTUARY, RETIREMENT BOARD

STENCILED

12-29-82

FINAL DISPOSITION

At the meeting of the Teachers' Retirement Board on Jan 10, 1983 the retirement of
Alice Clissuras from active service was approved and the annual retirement
allowance of $ 31,185.03 and -- units, as stated above, to be paid in monthly installments, was
authorized with payments to begin immediately/on XX

The retirement to be effective as of September 1 19 82

Wallace S. Sullivan
EXECUTIVE DIRECTOR, RETIREMENT BOARD

Retirement No. 60876
73:72:72

WDL # 118770

Received first check
1/3/83

Attachment 1

Modified
Attachment 2

The City of New York

TEACHERS' RETIREMENT SYSTEM

40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-6676

RETIREMENT BOARD
VICTOR F. CONDELL
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHEL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

WALLACE F. SULLIVAN,
Executive Director

DONALD S. MILLER, *Deputy Executive Director*
PATRICK J. KIERNAN, *Assistant Director*
DWIGHT R. KEARNS, *Assistant Director*

AE CLISSURAS
215 ADAMS STREET
BROOKLYN, NY 11201

1948-1968 20 yrs
1968-1982 14 yrs
34 yrs

T6/30358
Membership Number

AUGUST 11 1981
Date

Dear Member

For the purpose of establishing your prior service credit for all allowable New York City service rendered by you prior to the date you began to contribute to this system, the Retirement Board has evaluated your prior service claims and is sending herewith a report of its findings.

Your evaluated prior service claims amount to

20	02	01	for New York City Service rendered before	11-01-68
Years	Months	Days		(Date Your Contributions Began)

Will you carefully inspect the enclosed records, and if any service has been omitted which you think should have been included, please notify us at once.

If you agree with the findings shown on the work sheet, please sign the letter enclosed and return it at once.

If no reply is received within two weeks either accepting the findings or requesting further investigation, your prior service allowance will be presented to the Retirement Board for its approval.

A prompt reply will be mutually helpful in expediting the issuance of your prior service certificate.

signed returned 8/16/81

Sincerely,

Executive Director

enc.

EVALUATION PARALLELS THE SERVICE CLAIMED BY YOU. HENCE NO WORKSHEET
MEMBER'S COPY

The City of New York

TEACHERS' RETIREMENT SYSTEM
Office of the Actuary
40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-7677
JONATHAN SCHWARTZ, *Chief Actuary*

RETIREMENT BOARD
VICTOR F. CONDELLO
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

Refer To Registry No. R60876

FEB 7 1983

Miss Alice Clissuras
P.O. Box 1686
Brooklyn, N.Y. 11201

Dear Miss Clissuras:

This is in response to your recent inquiry relative to your retirement allowance. Your regular unmodified or maximum retirement allowance payable on retirement September 1, 1982 is $31,185.03 per annum computed as follows:

(1)	50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	=	$ 21,321.50
(2)	Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= (plus)	1,279.29
(3)	Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643.00	= (plus)	8,336.70
(4)	Plus the actuarial equivalent of the Increased-Take-Home-Pay accumulated after 20 years of Career Pension Plan service $19,274.66 ÷ 13.803	= (plus)	1,396.41
(5)	Less the actuarial equivalent of the deficit in the Annuity Savings Fund $15,857.85 ÷ 13.803	= (minus)	1,148.87
	Total Maximum Allowance		$31,185.03

Very truly yours,
Jonathan Schwartz
Actuary
by: Irving Hirsch
Chief, Benefit Certification Division

Attachment No. 3

Attachment 4

(1) Annuity

Actuarial equivalent of the Annuity Reserve Fund $4,286 ÷ 13.803	$ 310.56	Rounded to next higher multiple

(2) Regular Pension

(a) 50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	= $21,321.50	
(b) Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= 1,279.29	
(c) Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643.00	= 8,336.71	$30,937.50
(d) Less the actuarial equivalent of the minimum accumulation* $20,144.09 ÷ 13.803	= 1,459.40	--
(e) Less the actuarial equivalent of the Increased-Take-Home-Pay Reserve as of 20 year date $16,629.12 ÷ 13.803	= 1,204.75	2,664.15
Regular Pension Reserve is $28,273.35 x 13.803 or $390,257.05		$28,273.35

(3) Increased-Take-Home-Pay Pension

Actuarial equivalent of the ITHP accumulation $35,903.78 ÷ 13.803	$ 2,601.12	Rounded to next multiple
Total Maximum Allowance	$31,185.03	

* Minimum accumulation is the sum of required contributions in the New York State Teachers' Retirement System, New York City Employees' Retirement System and the Teachers' Retirement System during the first 20 years of service with interest to payability date.

PROBLEM 2: Statement of Accounts

It is very difficult to point out all the errors on the Statements of Accounts since the only item for which we received information with consistency is the rate of regular interest which is shown on the back of each form. On other items, such as rates of contributions for ITHP, special interest, etc., we were not kept consistently informed. Thus, checking figures and pointing out all errors are very difficult to do. There are many figures on many Statements about which I have questions; however, the problems that follow are set forth as illustrations of the problems and not at all as an attempt to be all inclusive.

No Statement of Accounts had ever been received by me for each of the years 1968, 1969, 1970, and 1982. I had received a portion of one of the earlier Statements. After many inquiries, I finally received, in a September 7, 1983, letter from Mr. Sullivan, a set of newly prepared Statements of Accounts for the years 1969-1982. I have not as yet ever received a Statement for 1968 which was the year I transferred from NYCERS to TRS.

On my original 1971 Statement of Accounts which was the first complete one I received from TRS, there were many errors: (Attachment No. 5)

- Contributions to ASF were incorrectly listed as $1,831.60. When I brought this to the attention of TRS, contributions of $2,994.08 were penciled in on the 1971 Statement and I was told that the error would be corrected on the next Statement.
- The ITHP was incorrectly listed as $840.81 which I was not aware of at the time.
- TDA credits were incorrectly listed as $129.14 and the corrected amount of $2,735.08 was penciled in by TRS and again I was told that the error would be corrected on the next Statement. In 1972 I received a letter in which TRS acknowledged the TDA error for purposes of correcting my W-2 for 1971 (see Attachment No. 6).
- Since I did not have Statements for 1968-1970, there was no way that I could understand the opening balances for ASF ($21,491.78) and ITHP ($9,713.63). I still do not know how they were determined.

As indicated above, in September, 1983, I received the 1970 Statement of Accounts which I assume was intended to explain the above but instead it added additional errors: (Attachment No. 7)

- TRS explained that the reason the credits were incorrectly stated on the 1971 Statement was that in December of 1970 erroneous duplications of credits were made which were corrected by the shortages of 1971. This was stated in a December 14, 1983 letter. I have an original part of the 1970 Statement which I received in 1971 which does not list the credits in duplicated amounts but in single amounts.
- The amount transferred from NYCERS is incorrectly listed as $14,985.64 when amount transferred was $15,675.66.
- Gross TDA is incorrectly listed as $5,740.40 when according to the figures on the Statement it should be $6,037.99. The interest amount for TDA variable units is obviously off.

Again, I do not understand many figures on many Statements; but as another example, I have several different 1982 Statements which sho different salary amounts, different totals for ASF, ITHP, and TDA, different TDA variable unit values (one shows 9.896 and another shows 11.494), etc. (See Attachments 8)

I think that my not being in computer is a source of many of the above problems, and my not being given a copy of TRS records is also a basic cause of the problems referred to throughout this letter. Whenever I ask a question I receive letters or sheets of paper which then add to the problems.

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS Attachment 5

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE *	VARIAB. ELECT.
J461 1000	A CLISSURAS	001630358	7 ‡	08-23-26	9.765	0 ‡

ITEMS‡		ANNUITY SAVINGS FUND (1) FIXED DOLLAR	ANNUITY SAVINGS FUND (2) VARIABLE UNITS	INCREASED-TAKE-HOME-PAY (3) FIXED DOLLAR	INCREASED-TAKE-HOME-PAY (4) VARIABLE UNITS
A	BALANCE AS OF 1/1/ 71	21,492.78 ?	0.00	9,713.63 ?	0.00
B	CREDITS-	-1,831.60	0.00	840.81	0.00
C	VARIABLE TRANSFERS	0.00	0.00	0.00	0.00
D	INTEREST OR INCREMENT	876.19	0.00	395.52	0.00
E	MISCELLANEOUS‡	0.00	0.00	0.00	0.00
F	BALANCE AS OF 1/1/ 72	24,200.57	0.00	10,949.96	0.00
G	DOLLAR VALUE OF VARIABLE UNITS → [(*Unit Value) Times Variable Units]		$ 0.00		→ $ 0.00

CURRENT YEAR TOTAL CONTRIBUTIONS‡ (DOES NOT INCLUDE LOAN REPAYMENTS)
~~1,831.60~~ 2994.08

ALL FIGURES ARE SUBJECT TO CORRECTIONS FOR ERRORS AND OMISSIONS

LOAN INFORMATION	
LOAN BALANCE	CURRENT YEAR LOAN INTEREST
0.00	0.00

QUESTIONS CONCERNING YOUR INDIVIDUAL ACCOUNT CANNOT BE ANSWERED BY TELEPHONE. SUCH INQUIRIES SHOULD BE MAILED TO THE ADDRESS SHOWN ABOVE. PLEASE USE MEMBERSHIP NUMBER

‡ SEE REVERSE SIDE FOR FURTHER DESCRIPTION

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

TAX-DEFERRED ANNUITY PROGRAM

STATEMENT OF ACCOUNTS AS OF JANUARY 1, 1972

Attachment 5

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	DATE OF BIRTH	UNIT VALUE	VARIABLE ELECTION
J461 1000	A CLISSURAS	A0T630358	- -	9.765	0

I GROSS T D A CONTRIBUTIONS	II EXPENSES	III NET T D A CONTRIBUTIONS (I-II)
~~115.81~~ 2735.08	~~13.33~~ 6.05	~~129.14~~ -

ITEMS‡	T.D.A. SAVINGS FUND (1) FIXED DOLLAR	(2) VARIABLE UNITS
A BALANCE AS OF 1/1/71	2,881.39	356.44
B CREDITS	129.14	0.00
C VARIABLE TRANSFERS	0.00	0.00
D INTEREST OR INCREMENT	69.01	14.26
E MISCELLANEOUS	21.81	0.00
F BALANCE AS OF 1/1/72	3,101.35	370.70

G DOLLAR VALUE OF VARIABLE UNITS → $ 3,619.89
‡ UNIT VALUE TIMES VARIABLE UNITS

ALL FIGURES ARE SUBJECT TO CORRECTIONS FOR ERRORS AND OMISSIONS

QUESTIONS CONCERNING YOUR INDIVIDUAL ACCOUNT CANNOT BE ANSWERED BY TELEPHONE. SUCH INQUIRIES SHOULD BE MAILED TO THE ADDRESS SHOWN ABOVE. PLEASE USE MEMBERSHIP NUMBER

SEE REVERSE SIDE FOR FURTHER DESCRIPTION

The City of New York

TEACHERS' RETIREMENT SYSTEM
40 WORTH STREET, NEW YORK, N Y 10013

WILLIAM T SCOTT, Secretary
JOHN A VANELLI, Assistant Secretary
WALLACE F SULLIVAN, Assistant Secretary
JESSE FELD, Actuary

RETIREMENT B
VICTOR J COND
Chairman
ABRAHAM D BI
MURRAY BERGTR
DR HOBART BUS
REUBEN W MITC
ISAIAH E ROBIN
DAVID M. WITT

March 30, 1972

RE: Federal Form W-2 for
A. Cliburns
P/R # 007630358
SS # 104 20 9440

Mr. Stefan Rozankowsky, Chief
Office of the Comptroller
Withholding Tax Division
Municipal Building
New York, N. Y. 10007

Dear Mr. Rozankowsky:

We have just discovered a serious error has been made in the preparation of the above cited member's W-2 Form for the year 1971.

After revieuing our Tax Deferred Annuity records as well as a computer print out of the W-2 program prepared for the Board of Education, we have determined that this member's W-2 was incorrectly prepared as follows:

1971 Unadjusted Gross	$25,[illegible].03	
1971 T.D.A. Deduction (in error)	- [illegible].81	(in error)
1971 Adjusted Gross (W-2)	$23,[illegible].22	

A review of our Tax Deferred Annuity records indicated that the amount of $315.81 reported as 1971 T.D.A. Deduction was incorrect. This amount should have been reported as $2,735.58. Therefore, use this letter as your authority to issue a corrected W-2 statement for the above cited member as follows:

1971 Unadjusted Gross	$25,[illegible].03
1971 T.D.A. Deduction	- 2,735.58
1971 Adjusted Gross (W-2)	$23,033.45

Please make every effort to have this corrected W-2 issued as quickly as possible.

Sincerely,

WALLACE F. SULLIVAN
Assistant Secretary

WFS/fm

#522

cc: A. Cliburns
215 Adams Street
Brooklyn, N. Y. 11201

Attachment 6

Received September 1983 Attachment

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS

(PLEASE RETAIN FOR YOUR PERMANENT RECORDS)

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE ELECTION A.S.F.
J461	AE CLISSURAS	00T630358	7	8-23-26	8.982	0

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (–) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**	INCREASED-TAKE-HOME-PAY (I.T.H.P.)				TAX DEFERRED ANNUITY (T.D.A.)	
	(1)	(2)	(3)	(4)	(5)	(6)
	FIXED DOLLAR	VARIABLE UNITS	FIXED DOLLAR	VARIABLE UNITS	FIXED DOLLAR	VARIABLE
A. OPENING BALANCE 1/1/70	2.215.19	0	1.623.24	0	0	0
B. CREDITS	3.661.83	0	2.017.53	0	2.853.87	354.5
C. VARIABLE TRANSFERS	0	0	0	0	0	0
D. INTEREST OR INCREMENT	630.12	0	146.96	0	27.52	1.9
E. MISCELLANEOUS	14.985.64	0	5.925.90	0	0	0
F. CLOSING BALANCE 1/1/ 71	21.492.78	0	9.713.63	0	2.881.39	356.4
G. DOLLAR VALUE OF VARIABLE UNITS (I*UNIT VALUE) TIMES VARIABLE UNITS)	$		$			$ 3.202.0

first the amount transferred by NYCERS

Obvious typo

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
	3.661.83	5.740.40	32.50	5.707.90

does not equal total of credits above

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	0	0

**See reverse side for further description.

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

GP - 3651 ED 1-80

Printed in U.S.

Attachment 8

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS

(PLEASE RETAIN FOR YOUR PERMANENT RECORDS)

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE** ELECTION A.S.F.	VARIABLE** ELECTION T.D.A.
0120 0120	AE CLISSURAS	00T630358	7	8-23-26	11.494	0	0

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (–) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**			INCREASED-TAKE-HOME-PAY (I.T.H.P.)		TAX DEFERRED ANNUITY (T.D.A.)	
	(1) FIXED DOLLAR	(2) VARIABLE UNITS	(3) FIXED DOLLAR	(4) VARIABLE UNITS	(5) FIXED DOLLAR	(6) VARIABLE UNITS
A. OPENING BALANCE 1/1/82	20.355.22	0	33.517.42	0	19.269.57	548.77
B. CREDITS	0	0	731.93	0	0	0
C. VARIABLE TRANSFERS	0	0	0	0	0	0
D. INTEREST OR INCREMENT	1.271.44	0	2.120.48	0	1.203.60	18.23
E. MISCELLANEOUS	-17.085.30	0	0	0	-20.591.98	-568.86
F. CLOSING BALANCE 1/1/83	4.541.36	0	36.369.83	0	- 118.81	- 1.86
G. DOLLAR VALUE OF VARIABLE UNITS [(*UNIT VALUE) TIMES VARIABLE UNITS]		$ 0		$ 0		$ 21.37

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
N/A	0	0	0	0

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	77.56	182.59

**See reverse side for further description.

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

GP - 3651 ED 1-80

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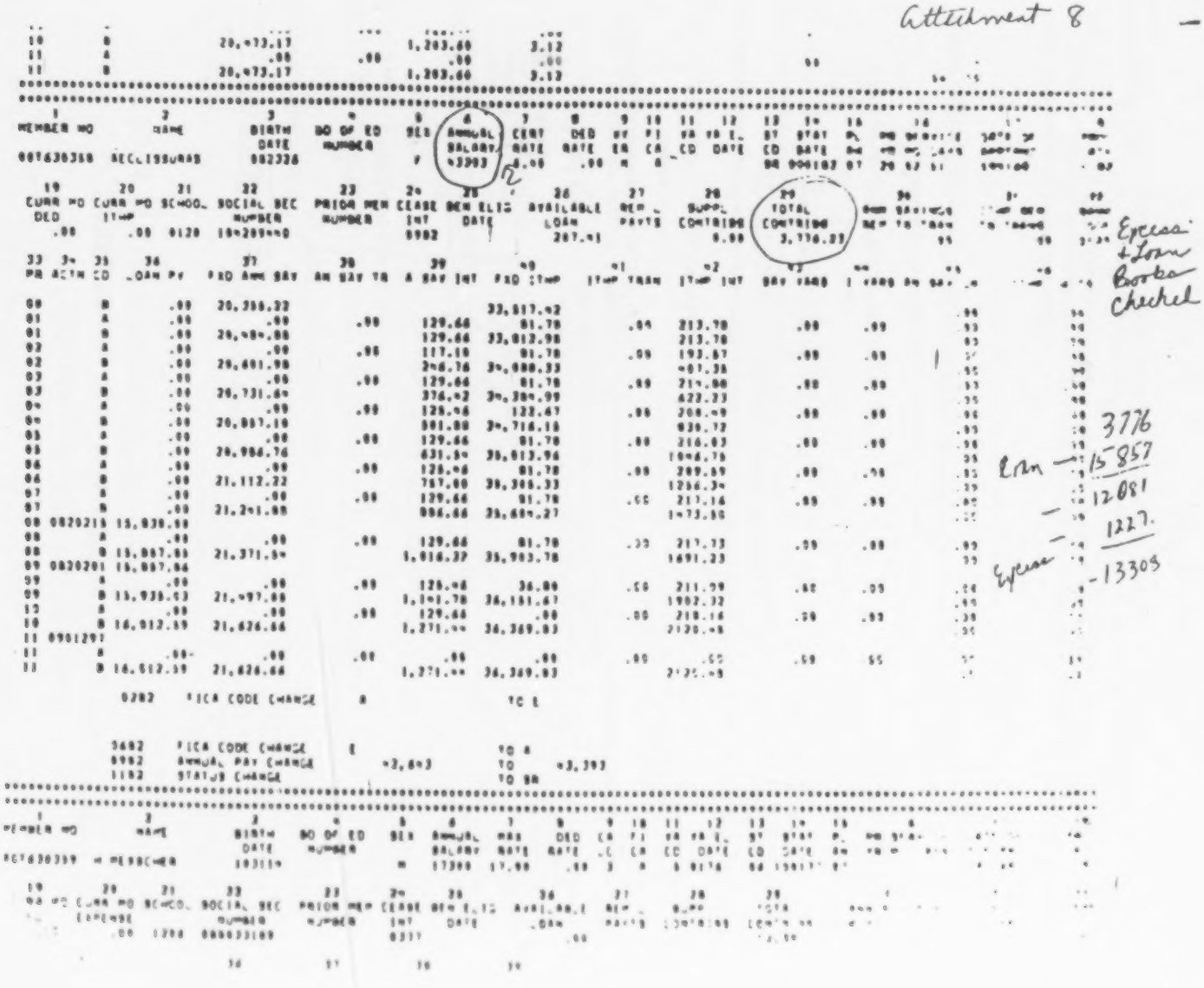
Attachment 8 —



Excess + Loan Books Checked

3776
Loan — 15857
12081
— 1227.
Excess — -13309

Attachment 8

PROBLEM 3: Credit for Prior Service

1948-1951 (2½ years) with New York State Teachers' Retirement Syste
1951-1953 (2½ years) with a New York State System which I believe t
be NYSTRS
1953-1968 (15 years) with New York City Employees' Retirement Syste
1968-1982 (14 years) with New York City Teachers' Retirement System

The above includes the following:

34 continuous years of teaching service at New York City Techni College. One paid leave of six months. No unpaid leave. (See Attachment 9)

I withdrew the pension contributions of the first 5 years; thus NYCERS credited me with 15 years.

NYC Technical College was always a City College according to my recollection. During the first 5 years, it was supported joi by New York State and City.

I transferred to NYCTRS in 1968 primarily for the purpose of gaining credit for prior service and I applied for this credi in 1968 upon entry to TRS.

The following has taken place with respect to the above service, including some errors:

In 1968, I applied for credit for prior service on my applicati form and by letter. (See Attachment No. 10)

No action was taken by TRS to my knowledge on this and I was being told that none of this service could be credited to me. This attitude persisted until 1980 when as a result of a class action against NYSTRS I was able to transfer the 1948-1 2½ years to TRS for which the State billed me $936.46. This transferred as City service. The $936.46 shows on my 1980 St ment of Accounts on the Miscellaneous line (see Attachment No.

As to 1951-1953, in 1980 when I was credited with 1948-1951, I was told by TRS that I had never contributed to a pension sys for 1951-1953. This is not so. I contributed for the first years and withdrew my contributions. TRS will not tell me the source of the information as to my not being a contributor fo 1951-1953. My College will not give me the name of the syste to which everyone at the College contributed during 1951-1953. I have made repeated attempts to get this information from many agencies.

My recollection of those years is that I was a member of one system (NYSTRS) for the 5 years and that I withdrew my contributions (based on misinformation) at the end of the 5 years. In a letter from NYSTRS to NYCTRS dated January 27, 1981 (see Attachment No. 12), it is stated that the amount of contributi

refunded was $936.46. This is what I recall happened at the end of the 5 years. NYSTRS sent me a copy of my Application for Refund which shows a return of $416.37 as of February 28, 1951. This seems to support the $936.46 for the five-year period. (See Attachment 13)

In any event, on a TRS form is found the following:

"You are entitled to immediate credit for prior service as follows

(a) * * *

(b) If it was rendered during which employment you became a member of this System.

(c) Service credit that was transferred from any public retirement system in New York City or New York State."

Under (b) above, I should have received immediate credit in 1968 for the 5 years of service.

In 1981, since I was nearing retirement, I made another attempt to get credit for the years 1951-1953. On this attempt, I was told that the only way I could get credit was to buy those years as "outside" service at a cost of $2,501.54. Due to the fact that credit for prior service was over a 12-year struggle for me and due to the fact that I was facing retirement in 1982 and due to the fact that TRS would give me no other choice or option in this matter but to purchase on the terms directed, I was forced to do this in an attempt to get some credit in the place and stead of none.

My prior service should have been credited as transferred service and not as purchased service.

The $2,501.54 which I paid should have been credited to my ASF in 1981. (See Attachment No. 14)

TRS worksheets incorrectly show that I was not a member of any retirement system for the period 1951-1953. (See Attachments 15 and 16)

August 1, 1968 letter in TRS file from Mrs. Berger, shows date of appointment to Asst. Prof. as 10/1/59; it should be 1954. (See Attachment 17)

Most of the above information I discovered after the fact in 1983 while trying to verify the calculation of the pension.

Attachment

TEACHERS' RETIREMENT SYSTEM
of the
CITY OF NEW YORK
154 Nassau Street
New York, N.Y.

Record of service rendered by Miss Alice Clissuras Membership No. 130358

Employment by New York City Community College

1. State title of position held by the above person during employment by your institution C.C. Professor

2. When did the above named person begin actual teaching service? 9 mo. 1 day 1948 yr.

3. When did this service end? Still in our employ mo. day yr.

4. Did teacher have a leave of absence between dates given above? Yes
For what period of time? 2/1/66 to 7/31/66

5. Was the above person a full-time or part-time employee? Full Time

6. How many hours of service per day were rendered?

7. How many weeks per year was college in session during this period? 52 week

8. Indicate basis of employment under a., b., c., or d. below:
   a. Annual-salary basis (appointed once a year) X
   b. Term-salary basis (appointed more than once a year)
   c. Monthly-salary basis (temporary employment)
   d. Per-diem-salary basis

9. Is the above information taken from official records? Yes

10. Explanatory remarks if any

Signature Juliet A. Chrysstiss

Official title Asst. to the Dean of Fa
OFFICE OF DEAN OF FACULTY 12/9

1387 Castle Hill Avenue
Bronx, New York 10462
November 18, 1968

130 358

Teachers' Retirement System--City of New York
40 Worth Street
New York, New York 10013

Gentlemen:

In June of this year, I transferred from New York City Employees' Retirement System to Teachers' Retirement System.

As part of Teachers' Retirement, I understand that it is possible to purchase time for earlier years of service. I would like to do this!

I have been a teacher at New York City Community College since September, 1948. From September, 1948 to September, 1953, we were under a New York State pension system. In September, 1953 instead of transferring those 5 years to New York City Employees' Retirement, I accepted a check for the amount of my contributions. From September, 1953 to September, 1968, I was a member of New York City Employees' Retirement. As of September, 1968, I transferred my years from 1953 to 1968 to Teachers' Retirement.

At this time, I would like to purchase the five years from September, 1948 to September, 1953 when I taught at New York City Community College (where I am at present) to include these five years under Teachers' Retirement.

The above-mentioned facts may be verified at New York City Community College, 300 Jay Street, Brooklyn, New York 11201.

Sincerely yours,

Alice Clissuras

Alice Clissuras

Attachment 10

DEC 3 1968

DEC 3 1968

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS

(PLEASE RETAIN FOR YOUR PERMANENT RECORDS)

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE ELECTION A.S.F.	VARIABLE ELECTION T.D.A.
J461 1115	A CLISSURAS	00T630358	7	08-23-26	10.798	0	0

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (–) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**	ANNUITY SAVINGS FUND (A.S.F.) (1) FIXED DOLLAR	(2) VARIABLE UNITS	INCREASED-TAKE-HOME-PAY (I.T.H.P.) (3) FIXED DOLLAR	(4) VARIABLE UNITS	TAX DEFERRED ANNUITY (T.D.A.) (5) FIXED DOLLAR	(6) VARIABLE UNITS
A. OPENING BALANCE 1/1/80	17,837.53	0.00	26,517.33	0.00	16,829.98	507.37
B. CREDITS	0.00	0.00	908.93	0.00	0.00	0.00
C. VARIABLE TRANSFERS	0.00	0.00	0.00	0.00	0.00	0.00
D. INTEREST OR INCREMENT	1,003.58	0.00	1,079.21	0.00	925.59	20.30
E. MISCELLANEOUS	936.46–	0.00	0.00	0.00	0.00	0.00
F. CLOSING BALANCE 1/1/81	19,777.57	0.00	28,505.47	0.00	17,755.57	527.67
G. DOLLAR VALUE OF VARIABLE UNITS [(*UNIT VALUE) TIMES VARIABLE UNITS]		$ 0.00		$ 0.00		$ 5,697.78

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
N/A	0.00	0.00	0.00	0.00

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	0.00	0.00

**See reverse side for further description.

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

GP - 3651 1-80

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Attachment 11

"MORE THAN 55 YEARS OF SERVICE TO TEACHERS"

NEW YORK STATE TEACHERS' RETIREMENT SYSTEM
143 WASHINGTON AVENUE ALBANY, NEW YORK 12210
Harold N. Langlitz, Executive Director
Telephone 447-2668
Area Code 518

81 JAN 29 P2:10

Office of Member Benefits

DATE: January 27, 1981

New York City Teachers'
Retirement System

1. $ 819.38 (Check Amount)
2. Alice Clissuras (Employee's Name)
3. 130358 (Number in Your System)

Enclosed find a check for the amount noted above (1) representing transfer of reserve in the case of the above-named employee (2) who was registered to membership in your system under the number shown (3).

Following is the data relative to the employee's status while a member of this System.

Date of Birth 8/23/1926 Sex F

Date *last* Membership Began 9/7/1948 ✓ Membership No. 150481

Date Membership Ended 2/28/1951 ✓ Soc. Sec. No. 104-20-9440

Date Service Ended 12/31/1950 ✓

Final Salary $ 3,553.20

Amount of Contributions Refunded $ 936.46

Amount of Outstanding Loan

Member's Take-Home-Pay

Group or Membership Status NE

Rate of Contribution Under Sec. 511-a Sec. 516-c

Length of Membership Service 2 years 6 months

Length of Prior Service for which Extra Pension is Allowable

Length of Prior Service for which No Extra Pension is Allowable

Total Service 2 years 6 months

Sincerely yours,

ST:ab

Enclosure
RET-50.1 (9/71)

Retirement and Estimate Unit –
Transfer Section

Wolf, Pearl	161737	755.15
Zaia, Elizabeth	164116	3,975.50
Zlater, Doris	168128	746.92
Zuckerman, June	180419	442.09
	Total	$79,778.15

This remittance is transmitted to you for deposit to the credit of the Teachers' Retirement System of the City of N.Y. and specifically to the credit of the Contingent Reserve Fund. This check was received from the New York State Teachers' Retirement System.

Very truly yf

FK:pd

Attachment 12

FREDERICK K
Chief Acco

Refund made last day of month if application is received prior to 24th

New York State Teachers Retirement System

APPLICATION FOR REFUND OF MEMBER'S CONTRIBUTIONS

To the New York State Teachers Retirement Board
152 Washington Ave., Albany 6, N. Y.

I hereby make application for the refund of all money contributed by me to the Annuity Savings Fund of the New York State Teachers Retirement System since August 1, 1921 ~~having resigned my~~ while teaching ~~position~~ in C.C.N.Y. Dept. of A+S. and am ~~not now under contract for further service in the public schools of New York State.~~

Alice F. Cliscuraa (Name of Applicant) 150481 (Membership No.) Mo. 8 Day 23 Yr. 26 (Date of Birth)

Give name of your last ~~superintendent~~ director of schools Mr. Otto Klotzpord

Following is a complete statement for the last two years of my teaching service in New York State

City, Village or Town (Location)	County	Number of Weeks Taught	Contract Salary	Amount Contributed	Year Ending
New York City	Kings	40	$3500	$180	June 30, 1950 (figures are rounded to $)
"	"	"	"	"	June 30, 1949

Give exact date your ~~salary and~~ service ceased: Membership began – Sept. 7, 1948 (Salary) (Service)

Was your salary paid you in 10 or 12 monthly installments? 12 mo. installments

In consideration of the receipt of the refund of contributions herein claimed I do hereby release and discharge the New York State Teachers Retirement System of and from any and all claims and demands of every nature.

[Signature of applicant] Alice Cliscuraa

State of New York
County of New York } ss:

Send Check to { Street 1367 Castle Hill Ave. City Bronx 61, N.Y. State New York

On this first day of February 1951, personally appeared before me the above named Alice Cliscuraa and made oath that the answers by h.r. above made and subscribed are true and full, to the best of h.r. knowledge and belief.

Notary Public

Leave the following blank

Received Feb. 1951 Acknowledged Refunded FEB 8 1951

Entry made on card

Amount Refunded 416 37

A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid the accumulated contributions standing to the credit of his individual account in the Annuity Savings Fund. If a teacher whose membership has ceased later resumes teaching in New York State public schools he *must* join the Retirement System as a *new entrant* and as such must contribute 5% of salary received and such contributions will be credited with 3% interest compounded annually.

Attachment 13

TEACHERS' RETIREMENT SYSTEM - CITY OF NEW YORK
40 WORTH STREET, NEW YORK, N.Y. 10013

JANUARY 1, 1982

STATEMENT OF ACCOUNTS

PLEASE RETAIN FOR YOUR PERMANENT RECORDS

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE** ELECTION A.S.F.	VARIABLE** ELECTION T.D.A.
0120 0120	AE CLISSURAS	00T630358	7	08-23-26	9.741	0	0

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (-) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**	ANNUITY SAVINGS FUND (A.S.F.) (1) FIXED DOLLAR	(2) VARIABLE UNITS	INCREASED-TAKE-HOME-PAY (I.T.H.P.) (3) FIXED DOLLAR	(4) VARIABLE UNITS	TAX DEFERRED ANNUITY (T.D.A.) (5) FIXED DOLLAR	(6) VARIABLE UNITS
A. OPENING BALANCE 1/1/81	19,777.57	0.00	28,505.47	0.00	17,755.57	527.67
B. CREDITS	0.00	0.00	1,002.07	0.00	0.00	0.00
C. VARIABLE TRANSFERS	0.00	0.00	0.00	0.00	0.00	0.00
D. INTEREST OR INCREMENT	1,476.98	0.00	2,301.76	0.00	1,344.30	21.10
E. MISCELLANEOUS	899.33-	0.00	1,708.12	0.00	169.70	0.00
F. CLOSING BALANCE 1/1/82	20,355.22	0.00	33,517.42	0.00	19,269.57	548.77
G. DOLLAR VALUE OF VARIABLE UNITS ((*UNIT VALUE) TIMES VARIABLE UNITS)		$ 0.00		$ 0.00		$ 5,345.56

2501.54?

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
N/A	0.00	0.00	0.00	0.00

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	0.00	0.00

**See reverse side for further description

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

Attachment 14

Modified

began with state 9/7/48 - 2/28/51
withdrew contributions-transferred
2 yrs. 6 mos. under Chap 974

period 3/1/51 - 9/1/53 not covered by membership in any ret sys + may purchase *

transferred from sys Employees
9/2/53 - 11/1/68 -

modify for transfer
under Chap 974
2 yrs 6 mos. ye

1953 9 1
1951 3 1
to be purchased 6 0

SYSTEM SET			
NO.	130358		
EI	8	23	26
	YRS.	MOS.	DAYS
8	17	8	1.
	2	6	0.
	20	2	1

TOTAL ~~CRED~~ PRIOR SERVICE AS OF 11/1/68

COMPUTED BY --- CHECKED BY _____ APPROVED BY _____

PRIOR SERVICE CERTIFICATE ISSUED 1/21/71

GRANTED 15 YRS 2 MOS 1 DAYS

NOTE: Note more than one year of credit may be granted for the aggregate service rendered during the same school year.

#71 (Supt. ?)

Attachment 15

Alice E. Clissura #130358

period 9/7/48-3/28/51 - Nyc Comm College was known as Ny State Institute of Applied Arts + Sciences - a state college - member held memberships in Ny State Teachers' - withdrew funds - but was able to transfer 2 yrs 6 mos 0 days under Chap 914

3/1/51 - 9/1/53 Nyc Comm still a state college - member did not hold memberships in state system - was able to purchase 2 yrs 6 mos 0 days

9/2/53 - 11/1/68, Nyc Comm became city college 9/1/53, member joined Nyc Employees and transferred 15 yrs 2 mos 1 day

Attachment 16

...t. BROOKLYN, N. Y. 11201 -- 643-2985

August 1, 1968

Records Division
Teachers Retirement System
40 Worth Street
New York, N. Y. 10013

Attention: Mrs. Miller

Dear Mrs. Miller:

Per your telephoned request, the appointment dates for Prof. Alice Clissuras are as follows:

Date		Title
9/1/48	N. Y. State Service	Instructor
9/1/53	City Service	Instructor
10/1/59 (shows 1/54)		Asst. Prof.
9/1/60		Assoc. Prof.
9/1/67		C. C. Professor

Her present salary is $16,130.00.

Very truly yours,

Frieda Berger

(Mrs.) Frieda Berger
Personnel Office

FB:jm

Attachment 17

PROBLEM 4: Procedural Errors

Most if not all of my problems with TRS have been caused by the absence of information and counseling.

Up until the time I retired and after, TRS did not give me any figures on my retirement allowance. Then, in response to inquiries, I began receiving conflicting information and answers. At that point, my knowledge was very limited so that I had no way of sorting the accurat answers from the inaccurate ones. There is no uniformity in this; in discussions with colleagues I have been told that they had received counseling from TRS, especially with respect to the 30-year retirement benefit.

I tried many times to get a response from TRS, CUNY, and the Union on the matter of the best date for retirement purposes and I could not get a response as to the simple matter of September 1 date.

Prior to removal of excess, I tried on several occasions to find out the amount of excess in order to make a sound decision. I had no success in getting this information beforehand. (See Attachment No.18 When I applied for this in August of 1982, I was told that I was not eligible because a year had not elapsed after the prior application. On the form itself it indicates that at the point of retirement you may apply for excess regardless of the time of the prior application. I persisted in this and finally received an excess amount. On my very first application for excess in 1975, TRS gave me a figure which was about $7,000 less than the amount to which I was entitled; and when I brought this to their attention, the response was something to the effect that it is a good thing I know what I am doing otherwise the error would not have been detected.

The attitude of TRS is one of: send us a list of the problems and we will respond. How can I list all the problems when I am not given a copy of the pension plan. I was directed to Code B20 which took an inordinate amount of time to even begin understanding the language.

I am not in computer at TRS which seems to be the reason why I did not receive the 3-page runoff summary of the pension moneys. I have not been given a copy of my record at TRS. I was allowed to xerox the papers in my folder and I am given sheets in response to inquiries however, whenever a TRS representative looks at my record at TRS I am always told that there are problems therein. I have not been given a copy of the record which indicates problems so that I do not know what is causing those problems.

There are errors in my papers which are in my folder, some of which were referred to in Problem 3.

My College will not give me payroll or personnel records, saying that my records were flood damaged. Yet, they supplied TRS with wrong information. My College will not even give me the name of a pension system. In addition, my College arbitrarily decreased my sick-leave days by 20 days; this was not done to all faculty. In addition, my

Attachment No

215 Adams Street
Brooklyn, NY 11201

September 22, 1982

Teachers' Retirement System
40 Worth Street
New York, NY 11201

Gentlemen:

On August 23 I submitted an application for withdrawal of excess contributions. I was informed that this would not be processed now. Does this mean that it will be processed later? September 30?

Last fall (1981) I was counseled to remove my excess and further counseled to remove all of it just prior to retirement.

Please let me know whether my application will be processed as of September 30. Also, I would like to know the amount of my excess--both taxable and tax free.

Thank you.

Sincerely yours,

Alice Clissuras

Alice Clissuras
No. 130358

CLISSURAS, EXHIBIT B,
AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING ONE
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12257

DATE April 19, 1984

Your recent communication has been received.

We shall process the communication and supplement this acknowledgement as soon as possible.
When corresponding, please refer to your file number below.

Very truly yours,

LESTER L. GRIMMELL, Supervisor
Bureau of Consumer Service

By: Roberta E. Panza

Roberta E. Panza
Preparation Unit

INQUIRER OR COMPLAINANT

TO

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

ON BEHALF OF

PLEASE REFER TO FILE NO. CA4-05983

CO. CODE NO.

RESPONDENT

New York City Teachers Retirement System
40 Worth Street
New York, NY 10013

FOR OFFICE USE ONLY

BUREAU	DATE OF RECEIPT MO.	DAY	YR.	LIC. CLASSIF.	REG. PAGE
2	4	16	84		

COMPLAINT ☒ INQUIRY ☐ INVESTIGATION ☐

SUBJECT CODE	SEC. OF LAW	LINE(S) OF INS.	DISP. CODE

EXAMINER	EXAMINER CODE	DATE CLOSED (MO.)	(YR.)

MISCELLANEOUS INSTRUCTIONS

dcm

780RB

CLISSURAS. EXHIBIT C. AFFIDAVIT IN OPPOSITION. PP. 373-374

215 Adams Street
Brooklyn, NY 11201
April 30, 1984

State of New York
Insurance Department
Agency Building One
Empire State Plaza
Albany, NY 12257

Gentlemen:

RE: File No. CA4-05983

In my April 5, 1984, letter to the Insurance Department, I set forth the problems I have been encountering with the New York City Teachers' Retirement System. One of the problems is "credit for prior service." As I indicated in my letter, TRS wrongly maintains that I was not a member of a pension system during the years 1951-1953. TRS will not tell me the source of this misinformation and my College will not give me the name of the system to which all faculty contributed during those years.

However, after much searching on my part, I have finally received confirmation of membership in the New York State Employees' Retirement System which membership ended on September 24, 1953. (See enclosure.) I received this confirmation a few weeks after my letter to the Department of Insurance.

TRS has made an issue of the above matter; but, as I indicated in my April 5 letter, "you are entitled to immediate credit for prior service * * * if it was rendered during which employment you became a member of this System (TRS)." Under this provision I should have received immediate credit for the prior service in 1968 when I entered the TRS.

Your review of this matter will be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras

New York State
Employees' Retirement System
Policemen's and Firemen's Retirement System
Edward V. Regan, State Comptroller
Gov. Smith State Office Building, Albany, New York 12244

April 23, 1984

REG #: 391700

Ms. Alice Clissuras
PO Box 1750
Brooklyn, NY 11201

Dear Ms. Clissuras:

You withdrew your membership in the Retirement System on September 24, 1953. At that time we sent you a check in the amount of $818.09, representing the return of your contributions, plus interest.

No other payments or benefits are due you from this System.

Sincerely,

Robert D. Swenson
Employees' Retirement
Membership Examiner V

RDS:neb

CLISSURAS, EXHIBIT D, AFFIDAVIT IN OPPOSITION

215 Adams Street
Brooklyn, NY 11201
June 7, 1984

State of New York
Insurance Department
Agency Building One
Empire State Plaza
Albany, NY 12257

Gentlemen:

RE: File No. CA4-05983

In my letter to the Insurance Department, dated April 5, 1984, I set forth in detail four broad areas of problems which I have encountered with the New York City Teachers' Retirement System. I have not received a response from your Department to date other than a notice dated April 19 which confirmed receipt of my letter and informed me of the file No. assigned to my complaint.

An indication from your Department as to when a response to my April 5 letter may be expected would be appreciated. As indicated in that letter, I have documentation to support the problems presented and I would make myself available for a meeting to discuss these matters in order to facilitate their resolution.

An early response will be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras

CLISSURAS, EXHIBIT E, AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK
INSURANCE DEPARTMENT

AGENCY BUILDING ONE
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12257

James P. Corcoran
Superintendent of Insurance

August 13, 1984

Congress of the United States
1536 Longworth House Office Building
Washington, D.C. 20515

Att: Honorable Stephen J. Solarz

Re: Our File No. CA4 05983
Alice Clissuras

Dear Representative Solarz:

This will have reference to your letter of inquiry dated July 3, 1984 on behalf of Alice Clissuras.

Due to the complexity of the complaint which involves acturial data and pension computations the Consumer Services Bureau is unable to respond in detail to the submitted complaint. We have determined that a parallel complaint involving similar questions was recently submitted for Ms. Patricia Clissuras (File No. CA4 01918) and said complaint was referred to our Life Bureau who is now located at 160 West Broadway, New York, N.Y. 10013.

We are therefore referring the above captioned file to Mr. James Gardiner, Life Bureau for his review and determination in this matter.

We are glad to have been of assistance and are concluding File No. CA4-05983 accordingly.

Very truly yours,

Lester L. Grimmell, Supervisor
Consumer Service Bureau, (Albany)

By: Stephen A. Welsh

Stephen A. Welsh
Examiner

SAW:nf
cc: Mary A. Griffin, Executive Assistant to the Superintendent
Ms. Alice Clissuras

CLISSURAS, EXHIBIT F.
AFFIDAVIT IN OPPOSITION.
PP. 377-378

STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK 10013

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

August 29, 1984

The Hon. Stephen J. Solarz
1536 Longworth House Office Building
Washington, D.C. 20515

Re; Alice Clissuras
Ins. Dept. File No. CA4-05983

Dear Mr. Solarz:

This is in further reply to your letter of July 3, 198 on behalf of Miss Alice Clissuras relative to problems in connec tion with her pension from the Teachers' Retirement System of th City of New York.

Under the New York statutes the Insurance Department h the general supervision of the public Retirement Systems in the State, and it is a responsibility of the Department to ensure, i sofar as possible, that members of the Retirement Systems are treated fairly and equitably. Accordingly, we have made a caref review of the file in this case, including both the questions ra by Miss Clissuras and the responses by the Teachers' Retirement System.

In a letter of December 14, 1983, with 15 pages of att ments, the Executive Director of the Retirement System covered f areas in which Miss Clissuras stated that major errors existed. explanations in that letter were made clearly and in considerabl detail. All errors in the accounts had been corrected and, in ou opinion, each alleged error has been satisfactorily resolved. Su "errors" usually arise from incorrect or delayed reporting of pay roll data by Employers to the Retirement System, and are not erro attributable to the administrators of the Retirement System. Th is evident from adjustments made when updated information becomes available.

In a letter of January 19, 1984 Miss Clissuras listed 1 items of major disagreement and questions, requesting a meeting r than written responses, and stated "I do not think it is possible discuss these matters in an exchange of letters".

At her request a meeting was arranged for her with the senior executives of the Teachers' Retirement System. For the most part the questions put forward and the responses were the same as tho covered in the letter of December 14, 1983. At the conclusion of the 2½ hour meeting Miss Clissuras requested that the discussion be confirmed in writing, which was done in a letter from the Executive Director.

The file in this case clearly indicates that the Retirement System has gone far beyond what would normally be expected of it in according to Miss Clissuras every possible consideration, by explaining in detail their procedures and in citing the statutory provisions under which the Retirement System operates. The staff of the System has gone to great length to answer her questions and to clear up misunderstandings, some of which involve misinterpretations of the applicable statutes.

After a detailed review it is the opinion of the Department that the benefits have been correctly calculated, and that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised, many of them of a highly technical nature. In addition, she has been given meticulous explanations of the rationale behind the procedures being followed.

Therefore we feel that there exists no further basis for complaint.

Sincerely,

James B. Gardiner

James B. Gardiner
Supervising Actuary

CLISSURAS, EXHIBIT G, AFFIDAVIT IN OPPOSITION, PP. 379-385

October 8, 1984

Ms. Mary A. Griffin, Executive Assistant to the Superintendent
State of New York Insurance Department
Empire State Plaza
Agency Building One
Albany, NY 12257

Dear Ms. Griffin:

On April 5, 1984, I sent a letter to the New York State Department of Insurance outlining in detail many of the problems which I have been experiencing for some time now with the New York City Teachers Retirement System (hereinafter TRS).

I did not receive a response from the Insurance Department until I enlisted the assistance of my Congressman. Then, on August 13, I received a copy of the letter which Mr. Welsh sent to Congressman Solarz in which he indicated that he was referring my complaint and my sister's parallel complaint to the Life Bureau in New York City.

Then, on September 4, Mr. Gardiner of the Life Bureau sent me a copy of the letter he sent to Congressman Solarz with reference to my problems. My sister has not as yet received a response from Mr. Gardiner.

Mr. Gardiner's letter regarding my problems, to put it mildly, is very surprising. I submitted to the Department of Insurance a summary of my problems in a considered and careful presentation. Gardiner does not respond to even one specific problem. He makes generalizations which are not supported by any specific illustrati or comments.

For example, in the third paragraph on page 1 of his letter, he states, "All errors in the accounts had been corrected and, in our opinion, each alleged error has been satisfactorily resolved." My Statements of Accounts are almost beyond comprehension and there a many errors from 1969-1982 which have never been explained and/or corrected. For example, in my Statement for 1970 (which I receive for the first time in 1983) an amount is listed in Miscellaneous c $14,985.64 which is supposed to be the amount which was transferre from New York City Employees' Retirement System to TRS. The amoun according to both pension systems is acknowledged to be $15,675.66 On the same 1970 Statement, the credits in the Tax Deferred Annuit Column are equal to $6,037.99 but in the summary at the bottom of the Statement are listed as $5,740.40. The many problems with

the Statementsare explained in detail in Problem 2 of my presentation to the State Department of Insurance. The Statement of Accounts for 1970 is Attachment 7. Mr. Gardiner does not explain where corrections of these 1970 amounts were made. TRS has never responded to these errors.

Mr. Gardiner concludes on the second page of his letter ". . . that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised. . ." This is his final generalization. I do not know how he arrived at this. Among the unanswered questions I include the following:

> Why have 2½ years of my 34 years of City service at one College been classified and charged as "outside service"?
>
> How did TRS arrive at a deficit in my Annuity Savings of $15,857.85 after they allowed me to remove excess?
>
> How did TRS arrive at the amount of my minimum accumulation when my 20th year of service was completed prior to my rate fixation date of 11/1/68?
>
> How did TRS arrive at the 20-year ITHP when the figures they used are the 25-year ITHP?
>
> Why was not a 30-year benefit included in the calculation of my pension as provided by law and as granted to colleagues?

I do not know why Mr. Gardiner concludes that the above questions (among many others) have been answered. What did he review to arrive at such a conclusion? As the overseer of a fiduciary of public moneys, Mr. Gardiner should have responded to the problems with some specificity at the very least which would reflect the extent of his investigation.

What is the purpose of an investigative agency such as the State Department of Insurance if the result of a detailed review is "that the benefits have been correctly calculated." If Mr. Gardiner's review found the answers to the questions which I have put to TRS and to the State Department of Insurance and some of which I listed above, I would like to know what the answers are.

My sister's problem with TRS is more narrow in scope and yet no responses have been forthcoming. She has many pressures in terms of age and health and has been trying to get information to allow her to make some important decisions. The information should be available to her as of course as it is to others but this is not the case.

For 34 years now, the City pension systems have been unresponsive, have not provided counseling, have not corrected errors, and seem not to have to account. Should not the State Department of Insura be responsive and account?

Why did not the State Department answer my letter of April 5? Was Mr. Gardiner's letter a response to Congressman Solarz's letter solely?

My sister is close to retirement and she cannot get answers to basic questions. Is there any responsibility here on the part of any City or State agency?

Ms. Griffin, your consideration and assistance in the matters here detailed will be most gratefully appreciated. An early response w also be appreciated.

Sincerely yours,

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

(718) 875-6171

Enclosures: For your convenience the following are enclosed:

(1) Mr. Welsh's August 13 letter.

(2) Mr. Gardiner's August 29 letter.

(3) 1970 Statement of Accounts

STATE OF NEW YORK
INSURANCE DEPARTMENT

AGENCY BUILDING ONE
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12257

James P. Corcoran
Superintendent of Insurance

August 13, 1984

Congress of the United States
1536 Longworth House Office Building
Washington, D.C. 20515

Att: Honorable Stephen J. Solarz

Re: Our File No. CA4 05983
Alice Clissuras

Dear Representative Solarz:

This will have reference to your letter of inquiry dated July 3, 1984 on behalf of Alice Clissuras.

Due to the complexity of the complaint which involves acturial data and pension computations the Consumer Services Bureau is unable to respond in detail to the submitted complaint. We have determined that a parallel complaint involving similar questions was recently submitted for Ms. Patricia Clissuras (File No. CA4 01918) and said complaint was referred to our Life Bureau who is now located at 160 West Broadway, New York, N.Y. 10013.

We are therefore referring the above captioned file to Mr. James Gardiner, Life Bureau for his review and determination in this matter.

We are glad to have been of assistance and are concluding File No. CA4-05983 accordingly.

Very truly yours,

Lester L. Grimmell, Supervisor
Consumer Service Bureau, (Albany)

By: Stephen A. Welsh

Stephen A. Welsh
Examiner

SAW:nf
cc: Mary A. Griffin, Executive Assistant to the Superintendent
Ms. Alice Clissuras

STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK 10013

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

August 29, 1984

The Hon. Stephen J. Solarz
1536 Longworth House Office Building
Washington, D.C. 20515

Re; Alice Clissuras
Ins. Dept. File No. CA4-05983

Dear Mr. Solarz:

This is in further reply to your letter of July 3, 198 on behalf of Miss Alice Clissuras relative to problems in connection with her pension from the Teachers' Retirement System of the City of New York.

Under the New York statutes the Insurance Department ha the general supervision of the public Retirement Systems in the State, and it is a responsibility of the Department to ensure, in sofar as possible, that members of the Retirement Systems are treated fairly and equitably. Accordingly, we have made a carefu review of the file in this case, including both the questions rai by Miss Clissuras and the responses by the Teachers' Retirement System.

In a letter of December 14, 1983, with 15 pages of atta ments, the Executive Director of the Retirement System covered fi areas in which Miss Clissuras stated that major errors existed. explanations in that letter were made clearly and in considerable detail. All errors in the accounts had been corrected and, in ou opinion, each alleged error has been satisfactorily resolved. Su "errors" usually arise from incorrect or delayed reporting of pay roll data by Employers to the Retirement System, and are not erro attributable to the administrators of the Retirement System. Thi is evident from adjustments made when updated information becomes available.

In a letter of January 19, 1984 Miss Clissuras listed 2 items of major disagreement and questions, requesting a meeting r than written responses, and stated "I do not think it is possible discuss these matters in an exchange of letters".

At her request a meeting was arranged for her with the senior executives of the Teachers' Retirement System. For the most part the questions put forward and the responses were the same as those covered in the letter of December 14, 1983. At the conclusion of the 2½ hour meeting Miss Clissuras requested that the discussion be confirmed in writing, which was done in a letter from the Executive Director.

The file in this case clearly indicates that the Retirement System has gone far beyond what would normally be expected of it in according to Miss Clissuras every possible consideration, by explaining in detail their procedures and in citing the statutory provisions under which the Retirement System operates. The staff of the System has gone to great length to answer her questions and to clear up misunderstandings, some of which involve misinterpretations of the applicable statutes.

After a detailed review it is the opinion of the Department that the benefits have been correctly calculated, and that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised, many of them of a highly technical nature. In addition, she has been given meticulous explanations of the rationale behind the procedures being followed.

Therefore we feel that there exists no further basis for complaint.

Sincerely,

James B. Gardiner

James B. Gardiner
Supervising Actuary

Received September 1983

Attachment 7

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS

(PLEASE RETAIN FOR YOUR PERMANENT RECORDS)

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE-ELECTION A.S.F.	VARIABLE-ELECTION T.D.A.
J461	AE CLISSURAS	00T630358	7	8-23-26	8.982	0	1

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (–) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**	(1) FIXED DOLLAR	(2) VARIABLE UNITS	INCREASED-TAKE-HOME-PAY (I.T.H.P.) (3) FIXED DOLLAR	(4) VARIABLE UNITS	TAX DEFERRED ANNUITY (T.D.A.) (5) FIXED DOLLAR	(6) VARIABLE UNITS
A. OPENING BALANCE 1/1/70	2.215.19	0	1.623.24	0	0	0
B. CREDITS	3.661.83	0	2.017.53	0	2.853.87	354.50
C. VARIABLE TRANSFERS	0	0	0	0	0	0
D. INTEREST OR INCREMENT	630.12	0	146.96	0	27.52	1.94
E. MISCELLANEOUS	14.985.64	0	5.925.90	0	0	0
F. CLOSING BALANCE 1/1/ 71	21.492.78	0	9.713.63	0	2.881.39	356.44
G. DOLLAR VALUE OF VARIABLE UNITS ((*UNIT VALUE) TIMES VARIABLE UNITS)		$				$ 3.202.06

Not the amount transferred by NYCERS

Obviously off — or low figure

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
	3.661.83	5.740.40	32.50	5.707.90

+ does not equal total of credits above

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	0	0

**See reverse side for further description.

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

GP - 3651 ED 1-80

Printed in U.S.A.

CLISSURAS, EXHIBIT H, AFFIDAVIT IN OPPOSITION

December 12, 1984

Ms. Mary A. Griffin, Executive Assistant to the Superintendent
State of New York Insurance Department
Empire State Plaza
Agency Building One
Albany, NY 12257

Dear Ms. Griffin:

On October 8, 1984, I sent you a letter in which I outlined some of the many problems which I have been experiencing with the New York City Teachers' Retirement System.

A response from you regarding this matter would be appreciated. I called you several times and you indicated that you would get back to me.

A copy of the letter which I sent you is enclosed for your convenience. Again, I would like to emphasize that my questions have not been answered, errors have not been corrected, and records have not been made available.

My first letter to the State Department of Insurance was sent on April 5. A response in this matter at your earliest convenience will be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras

215 Adams Street
Brooklyn, NY 11201

(718) 875-6171

CLISSURAS, EXHIBIT I, AFFIDAVIT IN OPPOSITION, PP. 387-391

December 12, 1984

Mr. James P. Corcoran, Superintendent of Insurance
State of New York Insurance Department
160 West Broadway
New York, NY 10013

Dear Mr. Corcoran:

On April 5, 1984, I sent a letter to the Department of Insurance outlining in detail some of the many problems I have been experiencing with the New York City Teachers' Retirement System. I ha not as yet received a response to the problems from the Departme of Insurance.

Mr. Gardiner sent a response to Congressman Stephen Solarz whose I enlisted and Mr. Gardiner sent me a copy of his letter to the Congressman.

Upon finally receiving a copy of Mr. Gardiner's letter, I was, t put it mildly, very surprised. I submitted to the Department of Insurance a summary of my problems in a considered and careful presentation. Mr. Gardiner did not respond to even one problem with any specifics. He made generalizations only which were not supported by any specific illustrations or comments.

Mr. Gardiner concludes on the second page of his letter ". . . t Miss Clissuras had been furnished with complete and correct answe to all of the questions raised. . ." This is his final generali tion. I do not know how he arrived at this. Among the unanswere questions I include the following:

> Why was not a 30-year benefit included in the calculation of my pension as provided by law?
>
> Why have 2½ years of my 34 years of City service at one College been classified and charged as "outside service"?
>
> How did TRS arrive at a deficit in my Annuity Savings of $15,857.85 after they allowed me to remove excess?
>
> How did TRS arrive at the amount of my minimum accumulation when my 20th year of service was completed prior to my rate fixation date of 11/1/68?
>
> How did TRS arrive at the 20-year ITHP when the figures they used are the 25-year ITHP?

The above questions have never been answered by TRS. I do not know what Mr. Gardiner reviewed to arrive at his conclusion that complete and correct answers had been received by me. I would appreciate answers to these questions among others.

For 34 years now, in my case, the City pension systems have been unresponsive, have not provided counseling, have not corrected errors, and seem not to have to account. Should not the State Department of Insurance be responsive and account?

My sister has a parallel complaint which was submitted to Mr. Gardiner and he indicated that he would respond but has not as yet.

Mr. Corcoran, your consideration, assistance, and response as to the matters herein detailed will be appreciated at your earliest convenience.

Sincerely yours,

Alice Clissuras

Alice Clissuras
File No. CA4 05983

215 Adams Street
Brooklyn, NY 11201
(718) 875-6171

Patricia Clissuras
File No. CA4 01918

The following are enclosed for your convenience:

(1) Letter from Mr. Stephen Welsh, Examiner

(2) Letter from Mr. James Gardiner, Supervising Actuary

STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING ONE
THE GOVERNOR NELSON A. ROCKEFELLER
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12257

James P. Corcoran
Superintendent of Insurance

August 13, 1984

Congress of the United States
1536 Longworth House Office Building
Washington, D.C. 20515

Att: Honorable Stephen J. Solarz

Re: Our File No. CA4 05983
Alice Clissuras

Dear Representative Solarz:

This will have reference to your letter of inquiry dated July 3, 1984 on behalf of Alice Clissuras.

Due to the complexity of the complaint which involves acturial data and pension computations the Consumer Services Bureau is unable to respond in detail to the submitted complaint. We have determined that a parallel complaint involving similar questions was recently submitted for Ms. Patricia Clissuras (File No. CA4 01918) and said complaint was referred to our Life Bureau who is now located at 160 West Broadway, New York, N.Y. 10013.

We are therefore referring the above captioned file to Mr. James Gardiner, Life Bureau for his review and determination in this matter.

We are glad to have been of assistance and are concluding File No. CA4-05983 accordingly.

Very truly yours,

Lester L. Grimmell, Supervisor
Consumer Service Bureau, (Albany)

By: Stephen A. Welsh

Stephen A. Welsh
Examiner

SAW:nf
cc: Mary A. Griffin, Executive Assistant to the Superintendent
Ms. Alice Clissuras

STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK 10013

AMES P. CORCORAN
PERINTENDENT OF INSURANCE

August 29, 1984

The Hon. Stephen J. Solarz
1536 Longworth House Office Building
Washington, D.C. 20515

Re; Alice Clissuras
Ins. Dept. File No..CA4-05983

Dear Mr. Solarz:

This is in further reply to your letter of July 3, 1984 on behalf of Miss Alice Clissuras relative to problems in connection with her pension from the Teachers' Retirement System of the City of New York.

Under the New York statutes the Insurance Department has the general supervision of the public Retirement Systems in the State, and it is a responsibility of the Department to ensure, insofar as possible, that members of the Retirement Systems are treated fairly and equitably. Accordingly, we have made a careful review of the file in this case, including both the questions raised by Miss Clissuras and the responses by the Teachers' Retirement System.

In a letter of December 14, 1983, with 15 pages of attachments, the Executive Director of the Retirement System covered five areas in which Miss Clissuras stated that major errors existed. The explanations in that letter were made clearly and in considerable detail. All errors in the accounts had been corrected and, in our opinion, each alleged error has been satisfactorily resolved. Such "errors" usually arise from incorrect or delayed reporting of payroll data by Employers to the Retirement System, and are not errors attributable to the administrators of the Retirement System. This is evident from adjustments made when updated information becomes available.

In a letter of January 19, 1984 Miss Clissuras listed 25 items of major disagreement and questions, requesting a meeting rather than written responses, and stated "I do not think it is possible to discuss these matters in an exchange of letters".

At her request a meeting was arranged for her with the senior executives of the Teachers' Retirement System. For the most part the questions put forward and the responses were the same as t covered in the letter of December 14, 1983. At the conclusion of t 2½ hour meeting Miss Clissuras requested that the discussion be confirmed in writing, which was done in a letter from the Executive Director.

The file in this case clearly indicates that the Retirement System has gone far beyond what would normally be expected of it in according to Miss Clissuras every possible consideration, by explaining in detail their procedures and in citing the statutory provisions under which the Retirement System operates. The staff of the System has gone to great length to answer her questions and to clear up misunderstandings, some of which involve misinterpretations of the applicable statutes.

After a detailed review it is the opinion of the Department that the benefits have been correctly calculated, and that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised, many of them of a highly technical nature. In addition, she has been given meticulous explanations of the rationale behind the procedures being followed.

Therefore we feel that there exists no further basis for complaint.

Sincerely,

James B. Gardiner

James B. Gardiner
Supervising Actuary

REC. ON AP., P. 392

CLISSURAS, EXHIBIT J.
AFFIDAVIT IN OPPOSITION.
PP. 392-393

STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING 1
NELSON A. ROCKEFELLER PLAZA
ALBANY, NEW YORK 12257

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

MARY A. GRIFFIN
EXECUTIVE ASSISTANT
TO THE SUPERINTENDENT
518 474 6653

January 31, 1985

Miss Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Miss Clissuras:

This is in reply to your letter of December 12, 1984 concerning your pension under the New York City Teachers' Retirement System. The following are answers to the questions raised in your letter.

Q. Why was not a 30-year benefit included in the calculation of my pension as provided by law?

This question is not answered

A. Section B20-45.0 (copy enclosed) of the New York City Administrative Code was enacted into Law to allow a member of the Teachers' Retirement System with 30 years of service who had not yet attained age 55 to make application for retirement. Since you had 34 years of service credit and were age 56 at the date of your retirement, September 1, 1982, this provision of law was not applicable to you.

Q. Why have 2-1/2 years of my 34 years of City service at one College been classified and charged as "outside service"?

A. From March 1, 1951 to September 1, 1953, you did not hold membership in the New York State Teachers' Retirement System or any other retirement system. Therefore, in order to obtain retirement credit in the New York City Teachers' Retirement System, pursuant to the Teachers' Retirement Law, as covered by Title B, Chapter 20 of the Administrative Code for the City of New York, Section 4.0 (copy enclosed), you had to purchase those two years and six months for retirement credit. Such purchased service is deemed to be "outside service" (i.e. other than New York City service).

not true!

not true

Q. How did TRS arrive at a deficit in my Annuity Savings of $15,857.85 after they allowed me to remove excess?

A. The deficit in your Annuity Savings Fund resulted from the fact that at the time of your retirement, you had an outstanding loan balance, which you had failed to repay, of $15,857.85.

Excess means amount over minimum accumulation.

Q. How did TRS arrive at the amount of my minimum accumulation when my 20th year of service was completed prior to my rate fixation date of 11/1/68?

A. There are really two questions contained in this one sentence. We will respond to them as (a) and (b).

(a) With respect to the minimum accumulation, that is arrived at in accordance with the Teachers' Retirement Law, as covered by Title B, Chapter 20, of the Administrative Code of the City of New York, Section 1.0, subsection (20). (Copy enclosed.)

(b) As of November 1, 1968 you had 17 years 8 months 1 day of New York City service. In addition you had 2 years 6 months of "outside service" (i.e. other than New York City service) which was purchased by you on July 24, 1981.

Q. How did TRS arrive at the 20-year ITHP when the figures they used are the 25-year ITHP?

A. The ITHP used at the 20-year date was $9,420.90 which, with interest to September 1, 1982, equalled $16,629.12. Your total ITHP as of your date of retirement (September 1, 1982), which includes the ~~additional ITHP~~ for service after the 20-year date, was $35,903.78. There is no relevance to a 25-year ITHP amount.

These answers have been previously furnished to you in prior correspondence with the Retirement System, and we believe the procedures followed are in conformity with applicable statutes.

Very truly yours,

Mary A. Griffin

Mary A. Griffin
Executive Asst. to the Superintendent

MAG/dg
Enclosures
cc: Messrs. Lennon
Gardiner

CLISSURAS. EXHIBIT K. AFFIDAVIT IN OPPOSITION. PP. 394-404

February 25, 1985

Mr. James P. Corcoran, Superintendent of Insurance
Insurance Department of the State of New York
160 West Broadway
New York, NY 10013

Dear Mr. Corcoran:

On April 5, 1984, I sent a letter which set forth in detail some of the many problems I have been experiencing with the New York City Teachers' Retirement System. I have not as yet received a response to that April 5 letter.

Due to the complexity of the problems, I have tried several times to arrange to meet with you to no avail. Would March 13, 20, or 27 be convenient? I would be happy to meet with you any of those three days at any time convenient for you or any other day at your convenience May I hear from you regarding an appointment?

On December 12, 1984, I sent a letter to Ms. Griffin in which I made reference to some of the major questions which have never been answered by NYCTRS. Ms. Griffin responded to the December 12 letter; a copy of her letter is enclosed.

NYCTRS has not calculated my pension with a 30-year benefit. Ms. Griffin responds that Section B20-45.0 does not apply to me. Is Ms. Griffin saying that I am not entitled to a 30-year benefit or is she saying that B20-45.0 does not apply? According to the Laws of New York, there is a 30-year benefit for those who have served for that length of time. There is also a 35-year benefit. Not only was I not informed of the 30-year benefit but also not of the 35-year. Several colleagues were advised to withdraw their 29-year retirement application, complete their 30 years, and then retire with the 30-year benefit which added a substantial amount to their pensions. I know of one teacher currently who was to retire in the 29th year in 1984 and upon advice is now completing the 30th year for the reason stated. Why are these people informed of the 30-year benefit and others are not?

I have taught for 34 years in one public school within the State of New York. My time has not been evaluated properly for the purposes of the pension calculation. Ms. Griffin states that during the period 1951-195 I did not hold membership in any retirement system. This is incorrect

for many reasons. I did hold membership in a pension system in 195[illegible] 1953. I was a member of NYSERS. See enclosure 2. I sent a copy o[illegible] the membership letter to the State Department of Insurance. It sho[illegible] be in your files. NYCTRS and the State Department of Insurance ign[illegible] this letter and keep insisting that I was not a member of a retirem[illegible] system. My College acknowledges that I was a member of a retirement system. I do not know how many times I must repeat this.

In addition, Ms. Griffin states that since I was not a member of an[illegible] retirement system that I had to purchase those 2½ years for retirem[illegible] credit as outside service. This is totally incorrect. On the form that TRS uses, it states that immediate credit is given for prior s[illegible] vice if it was rendered during which employment one became a member of TRS. This credit is granted without charge. Mrs. Tricarico of [illegible] told me that I should have received such credit. One colleague of [illegible] did not contribute to any retirement system for a period of time an[illegible] was granted the credit automatically without charge. See enclosure [illegible] which is the relevant portion of TRS's form. Prior service for all [illegible] granted on the basis described in the form.

TRS claims that I have a deficit in my Annuity Savings of $15,857.8[illegible] Ms. Griffin states that the outstanding loan balance of that amount [illegible] the deficit. An outstanding loan at the time of retirement does no[illegible] become a deficit in ASF. It is simply subtracted from the amount i[illegible] ASF and its actuarial equivalent is thus not added to the pension. TRS subtracted the actuarial equivalent of the loan without adding [illegible] thing for the amount in the ASF which should have resulted in a plu[illegible] difference rather than an amount to be subtracted. See enclosure 4.

TRS claims that my minimum accumulation is $20,144.09. Ms. Griffin states that the minimum accumulation is explained in B20.1.0 subs. [illegible] but does not indicate which one applies or does not apply to me. S[illegible] states that as of November 1, 1968, I had 17 years 8 months 1 day o[illegible] New York City service which I presume means that paragraph (d) of s[illegible] 20 does not apply to me according to Ms. Griffin. I have a certifi[illegible] of prior service in which TRS evaluates my service as 20 years 2 mo[illegible] 1 day of New York City service before 11/1/68, my rate fixation dat[illegible] Thus, paragraph d of subs. 20 would be the appropriate minimum accu[illegible] lation definition for my service. TRS and the State Department of [illegible] rance ignore this certificate. See enclosure 5. This certificate [illegible] contradicts the statements made for outside service mentioned above with respect to prior service. See also enclosure 6 which uses the actuarial equivalent of a minimum accumulation of $20,144.09. Not [illegible] is paragraph d not used, paragraph (b) of subs. 20 is also disregar[illegible]

Finally, for ITHP at the 20-year date, TRS used $16,629.12 which is [illegible] my 20-year ITHP; it is my 25-year ITHP. The relevance of this is t[illegible] my pension was not calculated correctly for my years of service. C[illegible]

the Report of Actuary, my total ITHP was used, $35,903.78, which is the correct procedure for my years of service. The Report of Actuary is one of three versions of the pension calculation which I have received. See enclosure 7.

Ms. Griffin states that answers to the above were furnished to me in prior correspondence. This is not so. TRS has never responded to the 30-year benefit, the membership letter from NYSERS, the prior credit statement on their form, the deficit in ASF, the certificate which shows 20 years of City service as of 1968, the minimum accumulation definition in (d) or at the very least (b), and the ITHP figure. Mr. Sullivan, in his May 30, 1984, letter to me informed me that I would be receiving a response to the above but nothing has been received to date. I do not know what Ms. Griffin examined which showed answers to the above questions. Again, I repeat the above questions have not been answered by TRS in any letters to me.

I do not understand how a fiduciary of public moneys can simply not answer questions and not correct errors. The above questions are the ones included in my follow-up letter to Ms. Griffin on December 12. Unfortunately, there are additional problems as presented in my April 5 letter. There are errors in my Statements of Accounts which have not been corrected, for example. As the overseer of TRS, the State Department of Insurance does not seem to be responding to these problems.

As stated at the beginning of my letter, I would appreciate an appointment to meet with you, Mr. Corcoran.

Or, at the very least a response to my April 5, 1984, letter some of the concerns of which are included above. These are major concerns which should be addressed by the State Department of Insurance.

Sincerely yours,

Alice Clissuras

Alice Clissuras
File No. CA4 05983

215 Adams Street
Brooklyn, NY 11201
(718) 875-6171

Enclosures: 7

cc: Ms. Griffin
Messrs. Lennon and Gardiner

Exhibit 1

STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING 1
NELSON A. ROCKEFELLER PLAZA
ALBANY, NEW YORK 12257

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

MARY A. GORDON
EXECUTIVE ASSISTANT
TO THE SUPERINTENDENT
518-474-6033

January 31, 1985

Miss Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Miss Clissuras:

This is in reply to your letter of December 12, 1984 concerning your pension under the New York City Teachers' Retirement System. The following are answers to the questions raised in your letter.

Q. Why was not a 30-year benefit included in the calculation of my pension as provided by law?

This statute is not operative!

A. Section B20-45.0 (copy enclosed) of the New York City Administrative Code was enacted into Law to allow a member of the Teachers' Retirement System with 30 years of service who had not yet attained age 55 to make application for retirement. Since you had 34 years of service credit and were age 56 at the date of your retirement, September 1, 1982, this provision of law was not applicable to you.

Q. Why have 2-1/2 years of my 34 years of City service at one College been classified and charged as "outside service"?

A. From March 1, 1951 to September 1, 1953, you did not hold membership in the New York State Teachers' Retirement System or any other retirement system. Therefore, in order to obtain retirement credit in the New York City Teachers' Retirement System, pursuant to the Teachers' Retirement Law, as covered by Title B, Chapter 20 of the Administrative Code for the City of New York, Section 4.0 (copy enclosed), you had to purchase those two years and six months for retirement credit. Such purchased service is deemed to be "outside service" (i.e. other than New York City service).

Not true!

Not true!

Q. How did TRS arrive at a deficit in my Annuity Savings of $15,857.85 after they allowed me to remove excess?

A. The deficit in your Annuity Savings Fund resulted from the fact that at the time of your retirement, you had an outstanding loan balance, which you had failed to repay, of $15,857.85.

Excess means amount over maximum accumulation!

Q. How did TRS arrive at the amount of my minimum accumulation when my 20th year of service was completed prior to my rate fixation date of 11/1/68?

A. There are really two questions contained in this one sentence. We will respond to them as (a) and (b).

(a) With respect to the minimum accumulation, that is arrived at in accordance with the Teachers' Retirement Law, as covered by Title R, Chapter 20, of the Administrative Code of the City of New York, Section 1.0, subsection (20). (Copy enclosed.)

(b) As of November 1, 1968 you had 17 years 8 months 1 day of New York City service. In addition you had 2 years 6 months of "outside service" (i.e. other than New York City service) which was purchased by you on July 24, 1981.

Q. How did TRS arrive at the 20-year ITHP when the figures they used are the 25-year ITHP?

A. The ITHP used at the 20-year date was $9,420.90 which, with interest to September 1, 1982, equalled $16,629.12. Your total ITHP as of your date of retirement (September 1, 1982), which includes the additional ITHP for service after the 20-year date, was $35,903.78. There is no relevance to a 25-year ITHP amount.

These answers have been previously furnished to you in prior correspondence with the Retirement System, and we believe the procedures followed are in conformity with applicable statutes.

Very truly yours,

Mary A. Griffin

Mary A. Griffin
Executive Asst. to the Superintendent

MAG/dg
Enclosures
cc: Messrs. Lennon
Gardiner

what about Sub 20 (b)?

20 yrs

See TRS Certificate

In my Case, 5 yrs bridging 34 yrs down to 29.

Where?

never! Where did you see the amounts?

New York State
Employees' Retirement System
Policemen's and Firemen's Retirement System
Edward V. Regan, State Comptroller
Gov. Smith State Office Building, Albany, New York 12244

April 23, 1984

REG #: 391700

Ms. Alice Clissuras
PO Box 1750
Brooklyn, NY 11201

Dear Ms. Clissuras:

You withdrew your membership in the Retirement System on September 24, 1953. At that time we sent you a check in the amount of $818.09, representing the return of your contributions, plus interest.

No other payments or benefits are due you from this System.

Sincerely,

Robert D. Swenson
Employees' Retirement
Membership Examiner V

RDS:neb

Enclosure 2

PRIOR SERVICE:

When you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to credit for previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In order for such prior service to be credited, you must properly fill out page three of this application.

You are entitled to immediate credit for prior service as follows:

(a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retirement system; or,

(b) If it was rendered during which employment you became a member of this System.

(c) Service credit that was transferred from any public retirement system in New York City or New York State.

DATE _____ TEACHER'S SIGNATURE _____

Enclosure 3

The City of New York

TEACHERS RETIREMENT SYSTEM
Office of the Actuary
40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-7677
JONATHAN SCHWARTZ, Chief Actuary

RETIREMENT BOARD
VICTOR F. CONDELLO
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

Retire Te Reg ters No R60876

FEB 7 1983

Miss Alice Clissuras
P.O. Box 1686
Brooklyn, N.Y. 11201

Dear Miss Clissuras:

This is in response to your recent inquiry relative to your retirement allowance. Your regular unmodified or maximum retirement allowance payable on retirement September 1, 1982 is $31,185.03 per annum computed as follows:

(1)	50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	=	$ 21,321.50
(2)	Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= (plus)	1,279.29
(3)	Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643,00	= (plus)	8,336.70
(4)	Plus the actuarial equivalent of the Increased-Take-Home-Pay accumulated after 20 years of Career Pension Plan service $19,274.66 ÷ 13.803	= (plus)	1,396.41
(5)	Less the actuarial equivalent of the deficit in the Annuity Savings Fund $15,857.85 ÷ 13.803	= (minus)	1,148.87
	Total Maximum Allowance		$31,185.03

Where is add on for ASF?

Enclosure 4.

Very truly yours,
Jonathan Schwartz
Chief Actuary
by: Irving Hirsch
Chief, Benefit Certification Division

Modified

The City of New York

TEACHERS' RETIREMENT SYSTEM

40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-6676

WALLACE F. SULLIVAN,
Executive Director

DONALD S. MILLER, *Deputy Executive Director*
PATRICK J. KIERNAN, *Assistant Director*
DWIGHT R. KEARNS, *Assistant Director*

RETIREMENT BOARD
VICTOR F. CONDELLO
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

AE CLISSURAS
215 ADAMS STREET
BROOKLYN, NY 11201

T6/30358
Membership Number

AUGUST 11 1981
Date

Dear Member

For the purpose of establishing your prior service credit for all allowable New York City service rendered by you prior to the date you began to contribute to this system, the Retirement Board has evaluated your prior service claims and is sending herewith a report of its findings.

Your evaluated prior service claims amount to

20	02	01	for New York City Service rendered before	11-01-68
Years	Months	Days		(Date Your Contributions Began)

Will you carefully inspect the enclosed records, and if any service has been omitted which you think should have been included, please notify us at once.

If you agree with the findings shown on the work sheet, please sign the letter enclosed and return it at once.

If no reply is received within two weeks either accepting the findings or requesting further investigation, your prior service allowance will be presented to the Retirement Board for its approval.

A prompt reply will be mutually helpful in expediting the issuance of your prior service certificate.

Sincerely,

Signed + returned 8/16/81

Enclosure 5

Executive Director

enc.

OUR EVALUATION PARALLELS THE SERVICE CLAIMED BY YOU. HENCE NO WORKSHEET IS ENC.

MEMBER'S COPY

(1) Annuity

Actuarial equivalent of the Annuity Reserve Fund $4,286 ÷ 13.803	$ 310.56	Rounded up to next higher multiple of 1

(2) Regular Pension

(a) 50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	= $21,321.50		
(b) Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= 1,279.29		
(c) Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643.00	= 8,336.71	$30,937.50	
(d) Less the actuarial equivalent of the minimum accumulation* $20,144.09 ÷ 13.803	= 1,459.40	--	
(e) Less the actuarial equivalent of the Increased-Take-Home-Pay Reserve as of 20 year date $16,629.12 ÷ 13.803	= 1,204.75	2,664.15	
Regular Pension Reserve is $28,273.35 x 13.803 or $390,257.05		$28,273.35	

(3) Increased-Take-Home-Pay Pension

Actuarial equivalent of the ITHP accumulation $35,903.78 ÷ 13.803	$ 2,601.12	Rounded down to next lower multiple of 1
Total Maximum Allowance	$31,185.03	

* Minimum accumulation is the sum of required contributions in the New York State Teachers' Retirement System, New York City Employees' Retirement System and the Teachers' Retirement System during the first 20 years of service with interest to payability date.

not 30-yr benefit calculation

See B20.1 (d) or Item (b)

Enclosure 6

REPORT OF ACTUARY

...ers' Retirement Board
...City of New York:

12-1-1982

I hereby certify that in the event of the Service/Ordinary Retirement on September 1, 1982
Alice Clissuras registered as an active member No. 130350 the following regular retirement
allowance may be granted to her/him under the provisions of law and on the basis of the mortality tables last approved by the Retirement
Board, with four per cent compound interest, with payments to begin immediately/~~on~~

...ber's Date of Birth August 23, 1926 Salary Base Used $ 42,643

...UND FROM WHICH PAYABLE	Initial Reserve	Annual Amount	Monthly Amount
...nuity Reserve Fund	$ 4,286.24	$ 310.56	$ 25.88
Regular Pension	$ 390,257.05	$ 28,273.35	$ 2,356.11
...T.H.P. Pension	$ 35,903.78	$ 2,601.12	$ 216.76
...sion Reserve Fund No. 1*	$ 426,160.83	$ 30,874.47	
...TAL FIXED ALLOWANCE	$ 430,447.07	$ 31,185.03	$ 2,598.75
...riable Annuity Reserve Fund	____ units	____ units	____ units
...riable Pension Reserve Fund	____ units	____ units	____ units
...TAL VARIABLE ALLOWANCE	____ units	____ units	____ units

...ncludes $ — which should be transferred from the Military Contribution Fund.

...ared by pk Date 12-1-82 Checked by [signature] Date 12-1-82

...PTION OFFICE FILED 12 31 82

[signature]
CHIEF ACTUARY, RETIREMENT BOARD

SUPPLEMENTARY REPORT OF ACTUARY

On _____ 19__, the above named member filed in this office an election to have his/her allowance paid u...
provisions of Option No. _____ and nominated _____
...neficiary. As a result of such election the following allowances are payable in lieu of those shown above.

Joint Date of Birth _____

...UND FROM WHICH PAYABLE	ANNUAL ALLOWANCE	MONTHLY ALLOWANCE
...nuity Reserve Fund	$	$
Regular Pension	$	$
...T.H.P. Pension	$	$
...sion Reserve Fund No. 1	$	
...TAL FIXED ALLOWANCE	$	$
...iable Annuity Reserve Fund	____ units	____ units
...iable Pension Reserve Fund	____ units	____ units
...TAL VARIABLE ALLOWANCE	units	units

...ared by _____ Date _____ Checked by _____ Date _____

...R INCOME TAX PURPOSES ONLY
...T OF OUTSIDE SERVICE $ 2501.54
...Y CONTRIBUTION PRIOR TO 1939 $ _____
...BER'S TOTAL CONTRIBUTIONS $ _____
(CONSIDERATION PAID)

...T VALUE AT DATE OF RETIREMENT _____

_____
CHIEF ACTUARY, RETIREMENT BOARD

STENCILED
12-29-82

FINAL DISPOSITION

At the meeting of the Teachers' Retirement Board on January 20, 1983 the retirement of
Alice Clissuras from active service was approved and the annual retirement
...wance of $ 31,185.03 and -- units, as stated above, to be paid in monthly installments, was
...ized, with payments to begin immediately/~~on~~

The said retirement to be effective as of September 1, 1982

...rement No. 60876

73:72:72 WSL # 118770

_____
EXECUTIVE DIRECTOR, RETIREMENT BOARD

Enclosure 7

CLISSURAS, EXHIBIT L
AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

June 7, 1985

Miss Alice Clissuras
215 Adams Street
Brooklyn, N.Y. 11201

Miss Clissuras:

Superintendent Corcoran has requested me to reply to your letter of February 25, 1985 relative to your pension under the New York City Teachers' Retirement System.

All of the questions raised in your letter of April 5, 1984 and elsewhere have been answered in considerable detail in correspondence with the Retirement System and with this Department. As previously indicated, we believe that the procedures followed by the Retirement System are in conformity with the applicable statutes as contained in the New York City Administrative Code. The correspondence also shows that any errors that may have existed in the reporting of information to the Retirement System had been corrected and the appropriate adjustments made in the computations of your benefits.

Accordingly, in my opinion, no useful purpose would be served by a meeting with the Insurance Department.

Terence Lennon
Chief, Life Insurance
and Companies Bureau

CLISSURAS. EXHIBIT M. AFFIDAVIT IN OPPOSITION. PP. 406-407

July 1, 1985

Mr. James P. Corcoran, Superintendent of Insurance
Insurance Department of the State of New York
160 Broadway
New York, NY 10013

Dear Mr. Corcoran:

The State Department of Insurance has never responded to my April 5, 1984 letter in which I presented, in the main, the problems I am having with the New York City Teachers' Retirement System. If there has been such answer, which Mr. Lennon makes obliquely in his June 7, 1985 letter, I would appreciate seeing a copy of it.

The State Department of Insurance, in addition to not answering, has not informed me of any procedure or procedures which would be taken, of any hearings, or of any specific investigation made. I have never been heard by any one at the State Department of Insurance on these problems which cannot be totally clarified by letter. No one has asked to see any of the documentation to which I refer in parts of my letters.

Is there a claim number for my case? No one makes any reference to it.

Mr. Lennon and Mr. Gardiner maintain that all of the questions raised by me have been answered in considerable detail in correspondence with the Retirement System. (See Mr. Lennon's letter of June 7, 1985.) In my January 19, 1984 letter to the Retirement System, I presented 25 problems to TRS. The first five had to do with errors in the calculation of the pension in the areas of no 30-year benefit, amount of minimum accumulation, outside service, and 20-year date ITHP. (See January 19, 1984 letter.) In his May 30, 1984 letter, Mr. Sullivan informed me as to these five problems that Mr. Schwartz would be writing me the responses in a separate communication. I have never received such responses. Where has the State Department of Insurance seen these responses?

Just for purposes of <u>illustration</u>, why does everyone ignore the letter from the NYSERS which evidences my membership in that system and why does everyone maintain that I was not a member of a pension system during that period? Why does everyone ignore the errors in my Statements of Accounts, such as the amount transferred from NYCERS?

Obviously, the State Department of Insurance has no intention of addressing the problems presented, in the main, in my April 5, 1984 letter. I would like to be persuaded otherwise.

Sincerely yours,

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

(718) 875-6171

cc: Messrs. Lennon and Gardiner

P.S. In his August 13, 1984 letter to Mr. Gardiner, Mr. Welsh in referring my matter stated that a parallel complaint involving my sister, Patricia Clissuras, was being referred to Mr. Gardiner. Mr. Gardiner has not responded to my sister as yet.

CLISSURAS, EXHIBIT N, AFFIDAVIT IN OPPOSITION, PP. 408-412

215 Adams Street
Brooklyn, NY 11201
January 19, 1984

Teachers' Retirement System of the
City of New York
Mr. Wallace F. Sullivan, Executive Director
40 Worth Street
New York, NY 10013

Dear Mr. Sullivan:

This letter is written in response to your letter of December 14 in which you responded to my presentation of errors which was included in my letter to you of September 8.

Unfortunately, your responses to my presentation of errors raise additional questions, include additional errors, and present additional conflicting numbers and information.

As you know, I have been raising questions about errors for some time now. Since you do not have procedures for addressing these problems, your taking the following actions in this case seems to have been warranted and may have resulted in a resolution:

1) Review of contributor's account to verify correctness and accuracy.
As fiduciaries of pension moneys, TRS should have reviewed the entire matter and made the records and findings available to the contributor. In my case, the approach taken by TRS has been one of: send us a list of the problems and we will respond to them.

2) Meeting with contributor to examine records and discuss findings.
The problems involved herein cannot be debated in writing. A meeting to discuss the issues involved seems to be patently needed. I would be happy to meet with you at your convenience to discuss the entire matter.

A meeting to discuss this matter should be held with the intent of resolving the problems. If you do not feel that such a meeting would be fruitful, I would then appreciate being included on the agenda of the earliest meeting of the Teachers' Retirement Board. When I left my presentation of errors with each Board member at its October meeting, the Chairman indicated that the Board would respond after you responded to the presentation. May I hear favorably from you regarding a meeting? Or, in the alternative, please include this matter as an agenda item at the next Board meeting to allow for discussion.

The following are the major disagreements and/or questions which remain and/or were raised as a result of your responses in your letter of December 14.

1) I disagree with the actuarial equivalent of the minimum accumulation which you express as $1,459.40 based on a minimum accumulation of $20,144.09.

Subparagraph (b) of paragraph 20 of Section B20-1.0 of the Administrative Code states that in the case of any twenty-year pension plan contributor, minimum accumulation shall mean the remainder obtained by subtracting the 20-year date ITHP from the accumulated deductions of twenty years of pension plan qualifying service. This results in a far lower figure than the $1,459.40 which you use.

Moreover, Subparagraph (d) of the same Section provides for a twenty-year contributor who had completed twenty or more years of qualifying service prior to his contribution rate fixation date and defines the minimum accumulation for such contributor as the actuarial equivalent of an annuity equal to 12½% of his annual salary on the rate fixation date. On 11/1/68, I had twenty years of New York City service. See enclosed copy of TRS certification of such service. The definition in (d) results in an even lower figure than the one arrived at in definition (b).

2) How was the 20-year date ITHP determined? According to my Statements of Accounts, the $16,629.12 figure falls in the 1974 Statement which is in my 26th year of service. The figure in my 20th year is substantially lower than the $16,629.12.

3) How was the minimum accumulation figure of $20,144.10 calculated? At what rates of contributions and interest and for which years?

4) No inclusion of benefits was made for special provisions for thirty-year retirement as provided in Section B20-45.0 of the Code.

5) The errors in the February 7, 1983, letter from Mr. Schwartz of the Office of the Actuary, to which you made reference include: use of 2.5 years of outside service when all of my service is City service; use of ITHP after 26 years and not after 20 years; no allowance for the first 20 years of ITHP; setting forth a deficit in the ASF of $15,857.85 when in fact my ASF contained the minimum accumulation as defined in the Code; no allowance for the amount in the ASF; and failure to provide for special allowance for thirty-year retirement.

Your explanation and Mr. Schwartz's explanation of the maximum allowance differ sharply in the parts used to arrive at the same total. Figures given me by the Professional Staff Congress (to which I was referred for figures by TRS) do not agree with your figures nor with those used by Mr. Schwartz nor with the total maximum allowance. The PSC arrived at a higher allowance.

6) (Re ERROR NO. 2 -- CITY CONTRIBUTIONS) Section B20-50.0 of the Code extends TRS to College participants with provisions relative thereto.

7) I have not to date been able to get a copy of my records from TRS. Over the years, whenever I made an inquiry about my Statements, TRS representatives told me on each occasion that I have a "gap" in my service. I do not have a gap. Yet, this has never been corrected; I was given this response in answer to a question as late as 1983.

8) I received with your letter of September 7 for the first time a Statement of Accounts for 1969, one for 1970 (a first for ASF and ITHP), and one for 1982, all of which were included in a set of newly prepared Statements for 1969-1982. These raise additional questions since I now have Statements for the same period of time which show conflicting figures.

9) In the 1970 Statement of Accounts, what periods of time are involved in the two Miscellaneous figures of $14,985.64 and $5,925.90? Do they include contributions for 1968 and 1969?

10) In your responses Nos. 6 and 7, you refer to duplication of credits for 1970 which were negated in 1971. Here, copies of TRS records for 1970, 1971, 1972, and 1973 would have been helpful. Instead, you listed the postings for 1971 in your letter and you started with 2/71 instead of 1/71. When I brought the 1971 and 1972 errors to the attention of TRS, they penciled in the correct figures for those years and I was told that the corrections would be incorporated in the ensuing years--this was not done. That was the first time I was told there was a gap in my service.

11) In your response No. 10, you state that the $2,501.54 was added to the Contingent Reserve Fund under law. To which law is that a reference and to which CRF is that a reference?

12) As indicated in your response No. 11, you sent me a 1982 Statement on September 7. This Statement carries totals for ASF, ITHP, and TDA which are not the ones used by TRS to figure my pension and to reimburse moneys.

13) The TDA variable unit value for 1982 is shown as 9.896 on one sheet and as 11.494 on another sheet.

14) As to interest, I find it difficult to arrive at some amounts as indicated in my earlier presentation regardless of the method used. Also, I do not find the addition of special interest to ASF and additional interest to ITHP as directed in B20-32.

15) You state that you have reviewed my various Statements and find them to be correct in the aggregate. My review of the same Statements does not lead me to the same conclusion. My not being in computer at TRS and my not being given a copy of TRS records are two basic causes of the the problems referred to throughout this listing.

16) As to errors on credit for prior service, the first error which was made by TRS was the failure of TRS to take action on my request for credit for prior service as indicated on my application form in 1968.

17) My five years of service from 1948-1953 should have transferred in to TRS without cost in 1963, the year of entrance into TRS, under Section 522 of the State Education Law.

18) My five years of service from 1948-1953 are City service and have been certified as such by TRS.

19) TRS is in error when it is maintained that I was not a member of any retirement system from 3/1/51 to 9/1/53. I was a member of New York State Employees Retirement System.

20) As to my service at Brooklyn Academy and at St. Joseph's College I did not apply for purchase of that service due to misinformati that was given to me to the effect that only service during whic you were a member of a retirement system could be purchased. Sin we did not have any written matter to assist us and since there was no reason at that time to question the source, I followed the directions given and did not include it on my application form. However, I am interested in making this purchase.

21) The error in Mrs. Berger's letter of August 1, 1968 is relevant to pension contributions.

22) As to procedures, prior to retirement I requested counseling and/or information from TRS regarding retirement and I was told that TRS does not do any pension counseling and that I should go to my union which I did.

23) As to meetings, you did meet with me. Mrs. Walker did not meet with me; when she determined what I wanted, she directed me to send her a letter and put everything to her in writing. Mr. Schwartz did not meet with me; he agreed to explain the figures in the Report of Actuary in a letter. In his letter of February 7, he did not explain the Report figures; instead he used other figures to arrive at the same allowance. No one at TRS has offered to meet with me; all the meetings have been at my insistence.

24) The Report of Actuary was not transmitted to me by TRS. I did not receive an analysis of my pension moneys from TRS either before or after receipt of the first check. When I went to TRS to make inquiries, a clerk handed me the Report of Actuary. I have never received an analysis of my pension moneys. Each time I raise a question I am given sheets or letters explaining the issues. The explanations usually involve responses which raise additional questions.

25) I do not understand why I am not in computer at TRS.

The errors listed above are described briefly in anticipation of a meeting with you or the Board at which they may be discussed at length. I do not think that it is possible to discuss these matters in an exchange of letters. Thus, I would appreciate a meeting with you or the Board in an earnest attempt to resolve the problems set forth herein.

May I hear from you soon regarding a meeting date?

Sincerely yours,

Alice Clissuras

Alice Clissuras

The City of New York

TEACHERS' RETIREMENT SYSTEM
Office of the Executive Director
10 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: Statistics

WALLACE F. SULLIVAN
Executive Director

DONALD S. MILLER, Deputy Executive Director
PATRICK J. KIERNAN, Assistant Director
CLAIRE MOSES, Associate Director
STANLEY J. KLESSOCK, Associate Director

RETIREMENT BOARD
PETER A. PISCI
Chairman
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AMELIA H. ASH
JOSEPH G. BAR
BERNARD GOLD
HARRISON J. GO
JOSEPH SHAN

CLISSURAS, EXHIBIT O, AFFIDAVIT IN OPPOSITION, PP. 413-415

May 30, 1984

Miss Alice Clissuras
215 Adams Street
Brooklyn, N.Y. 11201

Dear Miss Clissuras:

As agreed to at our meeting of March 28, 1984, I am providing you with the information you requested.

However, I would first like to review the circumstances concerning this matter. You had originally written to us on January 19, 1984 listing 25 "major disagreements and/or questions." this letter, you requested a meeting rather than written responses t your 25 items. If I may quote you, you stipulated "I do not think i is possible to discuss these matters in an exchange of letters." Therefore, we had set up a meeting for March 6, 1984. As circumstances would have it, you had cancelled that meeting. We therefore obliged you by selecting March 28, 1984 as a substitute meeting date.

Those in attendance at that meeting, in addition to you, were Mr. Jonathan Schwartz, Chief Actuary representing the Office of the Actuary, Mrs. Claire Moses and I, representing the Teachers' Retirement System. The agenda for this meeting were the 25 items contained in your letter of January 19, 1984. These items were disussed fully with you from 10:30 A.M. through 1:00 P.M. At the co clusion of this meeting, you then insisted that we now confirm everything stipulated to you at this meeting in writing. When I had indicated to you that we were prepared to respond in writing in the firs instance and felt that you preferred a verbalization of our responses that we had properly complied with your written wishes. You then agreed that our written responses be brief since they were merely intended to confirm what was said to you at this meeting.

Mr. Jonathan Schwartz will be writing to you in a separate communication concerning written responses to your item 1 through 5. I am providing you with written responses to items 6 through 25.

never used

6. Section B20-50 of the Administrative Code of the City of New York does not extend to college personnel the right of supplemental annuity payments for members at maximum pay scale. Please see my response, Error No. 2, in my letter to you on Decem-14, 1983.

7. We have repeatedly made all records available to you in each of your visits to this office.

8. I concur that in my letter of September 7, 1983, I had providing you with Statements of your Accounts from inception through 1982.

9. Your contributions for 1968 and 1969 appear on your 1/1/70 Annual Statement of Accounts in the areas of "credits" and "1/1/70 balance."

The two figures of $14,985.64 and $5,925.90 appear on your 1/1/71 Annual Statement of Accounts in the area "Miscellaneous." These represent the net transfer of your contributions from the New York City Employees' Retirement System for Annuity and I.T.H.P.

10. Please see my response, Error No. 3, in my letter to you of December 14, 1983.

11. Please see my response, Error No. 4, in my letter to you of December 14, 1983.

12. Your Annual Statement of Accounts carried your accounts to 12/31/82 with interest. Your Report of Actuary carried your accounts to 8/31/82 - the end of the month prior to your retirement.

13. As you know, the Tax Deferred Annuity Variable Unit Value changes each month. The Unit Value of 9.896 was the September 1982 Unit Value and the Unit Value of 11.494 is the January 1983 Unit Value. The unit value used for your retirement payroll was the September unit value of 9.896, the month in which you retired.

14. Matters with respect to interest have been fully explained in my letter of December 14, 1983.

15. Your original Annual Statement of Accounts had been computer emitted by our administrative agent.

16. Please see my response to your Error No. 4, in my letter to you of December 14, 1983.

17. Please see my response to your Error No. 4, in my letter to you of December 14, 1983.

18. Please see my response to your Error No. 4, in my letter to you of December 14, 1983.

19. The records of the New York State Employees' Retirement System which were shown to you at our meeting of March 28th indicated you were not a member of that System during the period you questioned.

20. The purchase of the service at Brooklyn Academy and St. John's College may not now be purchased. Such purchase must be made within the first four years of membership in this System, pursuant to Teachers' Retirement Law, as covered by Title B, Chapter 20 of the Administrative Code for the City of New York, B20-4.0. We have no administrative discretion with respect to this matter.

21. We do not agree. Mrs. Berger's letter has no effect on pension contributions.

22. We agree with your statement with respect to this issue.

23. Speaking for the staff of the Teachers' Retirement System, we will meet with any member at any mutually agreed to time. To the best of my knowledge, we have never refused to meet with you with respect to any issues you have raised.

24. You in fact have in your possession a Report of Actuary.

25. I do not understand what you mean with respect to "being in our computer." As a retired member, you are receiving monthly checks which are computer-emitted at a computer located in the Office of the Comptroller of the City of New York. While you were an active member, your records were maintained in a computer maintained by the Prudential under administrative agreement with the Teachers' Retirement System. It was not until after the date of your retirement that the Teachers' Retirement System acquired its own in-house computer. This Hewlett-Packard system became operational in February of 1984.

Sincerely,

WALLACE F. SULLIVAN
Executive Director

WFS:bw
cc: Mr. J. Schwartz

CLISSURAS, EXHIBIT P, AFFIDAVIT IN OPPOSITION, PP. 416-417

Received September 1983

TEACHERS' RETIREMENT SYSTEM-CITY OF NEW YORK

40 WORTH STREET, NEW YORK, N. Y. 10013

STATEMENT OF ACCOUNTS

(PLEASE RETAIN FOR YOUR PERMANENT RECORDS)

(NO DUPLICATES WILL BE ISSUED)

COLLEGE OR SCHOOL	NAME	MEMBERSHIP NUMBER	RETIRE PLAN	DATE OF BIRTH	UNIT VALUE*	VARIABLE** ELECTION A.S.F.	VARIABLE** ELECTION T.D.A.
J461	AZ CLISSURAS	00T630358	7	8-23-26	8.982	0	.1

(NEGATIVE VALUES ARE NOTED BY A MINUS SIGN (–) TO THE RIGHT OF THE NEGATIVE FIGURE)

ITEMS**	(1) FIXED DOLLAR	(2) VARIABLE UNITS	INCREASED-TAKE-HOME-PAY (I.T.H.P.) (3) FIXED DOLLAR	(4) VARIABLE UNITS	TAX DEFERRED ANNUITY (T.D.A.) (5) FIXED DOLLAR	(6) VARIABLE UNITS
A. OPENING BALANCE 1/1/70	2.215.19	0	1.623.24	0	0	0
B. CREDITS	3.661.83	0	2.017.53	0	2.853.87	354.50
C. VARIABLE TRANSFERS	0	0	0	0	0	0
D. INTEREST OR INCREMENT	630.12	0	146.96	0	27.52	1.94
E. MISCELLANEOUS	14.985.64	0	5.925.90	0	0	0
F. CLOSING BALANCE 1/1/ 71	21.492.78	0	9.713.63	0	2.881.39	356.44
G. DOLLAR VALUE OF VARIABLE UNITS [(*UNIT VALUE) TIMES VARIABLE UNITS]	$		$			$ 3.202.06

↓ Not the amount transferred by NYC ERS

CURRENT YEAR TOTAL CONTRIBUTIONS

(Includes Supplemental Annuity Contributions, if any, but does not include loan repayments or adjustments through check cancellations)

CO-ESC	A.S.F.	GROSS T.D.A.	T.D.A. EXPENSE	NET T.D.A.
	3.661.83	5.740.40	32.50	5.707.90

↓ Does not equal total of credits above

LOAN INFORMATION	LOAN BALANCE	CURRENT YEAR LOAN INTEREST
	0	0

**See reverse side for further description.

All figures are subject to corrections for errors and omissions. Questions concerning your individual account cannot be answered by telephone. Such inquiries should be mailed to the address shown above. Please use membership number.

GP - 3681 ED 1-80

Printed in U.S.A.

REPORT OF ACTUARY ON RESERVE TO BE TRANSFERRED

September 18, 197

To the Board of Estimate:

I hereby certify that by reason of the approval of the transfer of reserve in accordance with Section 73 of Chapter 592 of the Laws of the State of New York, on account of the transfer of Alice Clissuras,

Registry number 261679 from the New York City Teachers' Employees' Retirement System to the New York ~~Board of Education~~ Retirement System as of February 21, 1970 a reserve of $23,539.37 including reserve for Increased-Take-Home-Pay may be paid from the Contingent Reserve Fund to the retirement system to which the member is transferring, under the provisions of law, and on the basis of the mortality tables last approved for official use.

This reserve was based upon the following information:

Date of birth August 23, 1926	Length of membership service 15.17 years
Group Three Sex Female	Length of prior service for which extra pension is allowable None
Date membership began September 2, 1953	Employee's rate of contribution 3.45%
Date membership ended February 21, 1970	Amount of Accumulated Contributions (inc.I.T.H.P.) $21,601.56
	by Contributor (Refunded) 15,675.66
	by City (I.T.H.P.) 5,925.90
Average salary in year preceding transfer $16,325.47	Final salary $18,400.00

Respectfully submitted,

Jesse Feld

Actuary, New York City Employees' Retirement System.

jr

CLISSURAS, AFFIDAVIT IN OPPOSITION TO NOTICE OF MOTION TO DISMISS COMPLAINT (OF DEFENDANT INSURANCE DEPARTMENT)

EXHIBIT Q: SUPREME COURT COMPLAINT

(COMPLAINT OMITTED HERE SINCE IT APPEARS ON PP. 69-101, HEREIN)

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS.
PP. 419-438

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- : Index No. 20522/85

CITY OF NEW YORK, et al., :

Defendants. :

- -x

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANT DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK TO DISMISS THE COMPLAINT

PRELIMINARY STATEMENT

Plaintiff, pro se, submits this memorandum in opposition to the motion of defendant Department of Insurance of the State of New York (hereinafter "Insurance Department"), on the grounds that plaintiff has causes of action against the Insurance Department, that plaintiff's claims are not barred by any statutes of limitations applicable to her claims, that this Court has jurisdiction to determine plaintiff's claims against the Insurance Department, and that plaintiff questions statements made by Sue Barnett Bohringer, Esq., attorney for defendant Insurance Department, in her affidavit and memorandum and

questions the completeness and accuracy of Exhibits attached to her affidavit.

As a brief statement of plaintiff's action, plaintiff sets forth that she was employed as a teacher at New York City Technical College (hereinafter "College") for 34 continuous years from September 1, 1948, to September 1, 1982, the effective date of plaintiff's retirement. Plaintiff's pension benefits were not computed correctly and plaintiff was and is being deprived of substantial payroll and pension benefit amounts. The pivotal deprivation consists of the failure of the Teachers' Retirement System of the City of New York (hereinafter "Retirement System") to calculate plaintiff's pension for 34 years of New York City service and instead calculated her pension on the basis of 29 years of service, which resulted in a loss of five years of pension benefits and a loss of the 30-year retirement benefit, among other losses. None of the defendants informed plaintiff of the 30-year retirement allowance and of other benefit omissions, losses, inaccuracies, and improprieties. The circumstances of plaintiff's retirement process point to a conspiracy on the part of defendants to fraudulently conceal the correct pension benefits, in breach of their fiduciary duties and relationships to plaintiff. In this deprivation of plaintiff's benefits, the causes of action include, in addition to the above, breach of contract, gross negligence and recklessness, deprivation of due process, and discrimination against

plaintiff because of her sex and religion since male and/or non-Christian teachers were informed as to the various pension benefits and substantial amounts were added to their pensions. For all of the causes of action to plaintiff's damage, plaintiff seeks judgment as set forth in the complaint.

STATEMENT OF FACTS

Plaintiff was employed as a teacher at defendant College for 34 continuous years. Prior to retirement, the Retirement System would not answer any questions regarding the pension benefits and plaintiff was instructed to go to her union for any needed information. Plaintiff retired on September 1, 1982, and received her first pension check on or about January 2, 1983, with no explanation and no accounting of plaintiff's moneys. She went to the Retirement System's office to inquire about the amount of the check and found a great deal of resistance and no answers to questions. In response to questions about the amount of the pension, she received three versions of the calculation from the Retirement System at different times, each of which version includes errors and/or omissions and each of which is not a 30-year pension allowance.

After an exchange of many letters with the Retirement System, there were still many unanswered questions and many inconsistencies as to the calculation of the pension, as to

credit for prior service, as to the Statements of Accounts, and as to pensioner's rights. Thus, plaintiff attended the October, 1983, meeting of the Teachers' Retirement Board of the City of New York (hereinafter "Retirement Board") and presented the claims in writing to each member (or member substitute) of the Retirement Board present at the meeting. The Retirement Board has not responded to date.

Section 49.0 of the Administrative Code of the City of New York, Chapter 20, Title B, provides in part:

> "The retirement system shall be subject to the supervision of the department of insurance. . . ."

Thus, plaintiff called the Insurance Department and was instructed to write a clear presentation of the complaints and send them to the Insurance Department's Albany address. In addition, plaintiff was informed that after a file number is issued, the agency involved is given 28 days to respond. Thus, plaintiff sent a letter, dated April 5, 1984, to the Insurance Department, such letter included a careful presentation of plaintiff's claims with 18 attachments of documents to support the claims made. (Clissuras Aff., Ex. A.) The Insurance Department sent a letter in which file number was assigned and in which there was indication that the complaint would be processed. (Clissuras Aff., Ex. B.) The complaint has not been processed to date. In addition, the Insurance Department has not answered the April 5, 1984, letter to date. See complete

file of correspondence with Insurance Department (Clissuras Aff., Exs. A - M).

By August of 1984, since no answer had been received from the Insurance Department, plaintiff enlisted the assistance of her representative, United States Congressman Stephen J. Solarz. In response to Congressman Solarz' inquiry, the Consumer Service Bureau informed him on August 1 1984, that they were referring plaintiff's claims to the Life Bureau's supervising actuary due to the complexity of the problems. (Clissuras Aff., Ex. E.) The supervising actuary, Mr. James Gardiner, then sent a letter, dated August 29, 1984, to Congressman Solarz in which he stated that everything had been correctly calculated and that plaintiff had been furnished with complete and correct answers to all questions raised. Mr. Gardiner did not make reference to even one specific claim. (Clissuras Aff., Ex. F.) He rested totally on generalizations. Attorney for defendant Insurance Department quotes from Mr. Gardiner's letter on page 3 of her Memorandum to the effect that all the alleged errors have been corrected and that the errors are usually caused by the delayed reporting of data by employers and are not errors of the Retirement System. That generalization does not explain Insurance Department's concealment of the pension plan which pertains to plaintiff. Plaintiff has three versions from the Retirement System. Which, if any, does

the Insurance Department think is a correct version? Moreover, Mr. Gardiner did not make any reference to the improper method by which plaintiff was required to purchase her prior service as outside service. Then, Ms. Mary Griffin, Executive Assistant to the Superintendent, wrote a letter responding to plaintiff's December 12, 1984, letter to Superintendent James Corcoran. Each of Ms. Griffin's answers to the five questions raised illustratively by plaintiff in her December 12 letter includes error. Plaintiff refutes the answers in her February 25, 1985, letter to Superintendent Corcoran to which she attached documentation. (Clissuras Aff., Ex. K.) For the sake of brevity, one of the misrepresentations included in Ms. Griffin's letter will be used here as an illustration; namely, Ms. Griffin states on page 2 of her letter that as of November 1, 1968, plaintiff had 17 years, 8 months, 1 day of New York City Service. Plaintiff has sent to the Insurance Department on several occasions a copy of the Retirement System's certification of her time in which the Retirement Board certified her service as 20 years, 2 months, 1 day, of New York City Service as of November 1, 1968, plaintiff's rate fixation date. (Clissuras Aff., Ex. A, Attach. 1 and Ex. K, Enc. 5.) The Insurance Department and all other involved parties herein recklessly disregard the certification of the Retirement Board and fraudulently maintain to date that I was not a member of a pension system during the

years 1951-1953. The attorney for defendant Insurance Department characterizes this on page 4 of her memorandum and elsewhere as plaintiff's refusal to accept the Department's answers which she claims to prove by stating that plaintiff's refusal is shown by her handwritten notes on the January 31 letter. Again, the documentation to which the handwritten notes provided a highlight is totally disregarded. The attorney for defendant Insurance Department does not even include the documentation which consists of 7 enclosures with the February 25, 1985, letter in her Exhibit. (Bohringer Aff. Ex. G.) And this illustration is only one example of many such misrepresentations and omissions.

As to the causes of action as set forth in four major areas in the complaint and the Insurance Department, the Insurance Department conspired with other defendants to fraudulently conceal for the first cause of action the pension plan which should have been used to determine plaintiff's pension, for the second cause of action the regulations for granting credit for plaintiff's prior service for which credit should have been given automatically, and for the third cause of action the errors in plaintiff's Statements of Accounts which have not been corrected. As to the fourth cause of action, the deprivation of rights, the Insurance Department in breach of its fiduciary duty, deprived plaintiff of the confidence and trust which

which are essential in a fiduciary relation; the Insurance Department deprived plaintiff of due process rights when it did not show evidence of its investigation, did not make response to plaintiff's presentation of her claims, and would not meet with plaintiff; and the Insurance Department discriminated against plaintiff by denying her equal protection of the laws enjoyed by others in similar circumstances.

POINT I

THE COMPLAINT SETS FORTH CAUSES OF ACTION IN FOUR MAJOR AREAS

In an attempt to bring as much clarity as possible to the enumeration and explanation of the numerous causes of action arising from the numerous and complex transactions, plaintiff groups the causes into four major areas.

As to the first cause of action, essentially the calculation of plaintiff's pension, the defendants fraudulently concealed the pension plan which should have been applied to calculate plaintiff's pension. Since the wrong pension plan was applied, plaintiff was deprived of her maximum benefits.

The elements required for this first cause of action as to fraud, all of which elements are present herein, are (1) false statements made by defendants, including oral and written words and non-disclosures; (2) knowledge or belief on the part of the defendants that the representations are false,

including the exception to scienter where the parties stand i a confidential or fiduciary relation to one another; (3)intention to induce plaintiff to act or refrain from action in reliance on the misrepresentation; (4) justifiable reliance on the representation by plaintiff; and (5) damage to plaintiff, as a result of the reliance. Keeton, Prosser and Keeto on Torts, 5th Ed., pp. 728, 738 (1984).

The defendant Insurance Department in its correspond ence with plaintiff fraudulently concealed the 30-year retirement allowance which plaintiff with 34 years of service shoul have received. In addition, the defendant Insurance Departme maintained and still maintains that plaintiff's pension benefits have been calculated correctly without any indication of what this means or what is correct. An investigation by the Insurance Department should have revealed that plaintiff's pension was improperly calculated for 29 years of service instead of 34 years which is the essence of the first cause o action.

When a defendant who has a fiduciary relation to th plaintiff makes a misrepresentation, the law regards this as an actionable breach of duty. Also, in a relation warranting the trusting plaintiff to repose his confidence in the defendant, the element of scienter is replaced by the fiduciary dut Brown v. Lockwood, 76 A.D.2d 721, 432 N.Y.S.2d 186 (1980). In Brown, the court definitively distinguishes between actual and constructive fraud and states as to the latter that it is

a breach of duty irrespective of moral guilt and intent and that it is fraud because of its tendency to deceive or to injure public or private interests which the law deems worthy of special protection. Brown v. Lockwood, 432 N.Y.S.2d at pp. 193-195. All of these elements are present in the instant action, as set forth above.

Moreover, as to the first cause of action, the defendants conspired to fraudulently conceal the correct retirement allowance which plaintiff should have received. In a civil action for conspiracy, the essence is the damage and the averment of a conspiracy is important for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

As to the second cause of action, credit for prior service, the regulations for granting credit for plaintiff's prior service were fraudulently concealed from plaintiff and the Insurance Department conspired with other defendants to misrepresent that plaintiff purchase as outside service 2-1/2 years of service for which she should have been given automatic and immediate credit since it was service in the job of entry in membership in the Retirement System. (Clissuras Aff., Ex. A, Attachs. 12-17.)

As to the third cause of action, plaintiff's financial records, the Insurance Department again generalizes to the

conclusion that everything has been corrected. Although errors are still present in plaintiff's account, the Insurance Department, after it claims it investigated the records, recklessly disregards the still present errors and states that everything has been corrected.

As to the second and third causes of action, the arguments made above for fraud and conspiracy with respect to the first cause of action prevail also for the second and third causes of action.

As to the fourth cause of action, the deprivation of rights, the Insurance Department did not make response to plaintiff's presentation of her claims, did not show evidence of its investigation, and would not meet with plaintiff. As a result, plaintiff was deprived of rights of due process and as a result, the Insurance Department breached its fiduciary duty to plaintiff.

With respect to action taken by administrative agencies, the court has held that in quasi-judicial proceedings where facts are in dispute, due process requires a hearing. Munter v. Gross, 42 Misc.2d 690, 248 N.Y.S.2d 717 (1964). Even if a hearing is not mandatory, the Insurance Department, in assuming its obligation to investigate plaintiff's claims and in effect exercising quasi-judicial powers should have applied procedural standards in consonance with such powers in order to fulfill the requirements of due process. In the instant case,

there were some indications at several points of the possibility of due process procedures. For example, the response from the Insurance Department's Bureau of Consumer Service which in a form letter indicated that plaintiff's complaint would be processed. (Clissuras Aff., Ex. B.) There has been no visible processing of the complaint. In addition, in his August 29, 1984, response to Congressman Solarz, Mr. Gardiner states:

> "Under the New York statutes the Insurance Department has the general supervision of the public Retirement Systems in the State, and it is a responsibility of the Department to ensure, insofar as possible, that members of the Retirement Systems are treated fairly and equitably." (Clissuras Aff., Ex. F.)

However, this responsibility was not assumed by the Insurance Department as to plaintiff's due process rights and as to plaintiff's human rights to fair and equitable treatment.

As to its fiduciary duty to plaintiff, the Insurance Department stands in superior knowledge or expertise on pensions over plaintiff and in such position owed plaintiff scrupulous answers on the basis of its superior knowledge and position of trust. Defendant Insurance Department breached its duty as a fiduciary for all of plaintiff's causes of action.

POINT II

PLAINTIFF'S CLAIMS ARE NOT BARRED BY ANY STATUTES OF LIMITATIONS

Most, if not all, of the causes of action herein are within the period allowed by the statute of limitations; thus, the right to maintain them is not lost. Moreover, the causes of action which plaintiff sets forth against the defendants are grounded in fraud and concealment.

A. Continuing Wrong (and Estoppel)

Where the cause of action is conceived in fraud, it is a continuing wrong not barred by any statute. Greenberg v. Schwartz, 73 N.Y.S.2d 458 (1947). In Greenberg, the action was brought to remove mortgage as cloud on plaintiff's title. The court held that defendant's claim that the statute of limitati had run before the suit was commenced is without merit since t kind of wrong complained of is a continuing wrong and not barr by any statute. Further, a court may estop a defendant whose misconduct makes it unfair for him to hide behind the statute of limitations as in the situation where defendant conceals cause of action from plaintiff. CPLR § C201:6 Application of Art. 2: Estoppel to Assert Statute of Limitations. A defendent who has fraudulently concealed a breach of a legal obligation can be estopped from pleading the statute of limitations

as a defense. General Stencils, Inc., v. Chiappa, 18 N.Y.2d 125, 272 N.Y.S.2d 337, 219 N.E.2d 169 (1966); Simcuski v. Saeli, 44 N.Y.2d 442, 406 N.Y.S.2d 259, 377 N.E.2d 713 (1978). In the Chiappa "rule," the Court of Appeals held that the theory in this case of concealment of theft is that a defendant should not be permitted to take refuge behind the shield of his own wrong. In Simcuski, the complaint alleges that defendant intentionally concealed the alleged malpractice from plaintiff and falsely assured her of effective treatment. Thus, the court held that equitable estoppel is applicable to relieve plaintiff from the proscriptions of the statute in this case. The estoppel question also arises where the defendant is a fiduciary and thus has a duty to speak. Erbe v. Lincoln Rochester Trust Co., 13 A.D.2d 211, 214 N.Y.S.2d 849, app.dsmd. 11 N.Y.2d 754, 226 N.Y.S.2d 692, 181 N.E.2d 629 (1961. In the instant case, defendants concealed the causes of action and lulled plaintiff into thinking that everything would be done correctly or that everything was correct. In 1981, for example, the Retirement System certified plaintiff's service as, in effect, 34 years of New York City Service, which led plaintiff to believe that her pension would be calculated on the basis of that service. As late as June 7, 1985, the Insurance Department was assuring plaintiff that everything had been done correctly.

As to continuing wrongs and discriminatory practices, CPLR § 297, Exec.Law Art. 15: Human Rights Law, Note 5, sets forth that a complaint made upon violation of this article must be filed with the Division of Human Rights within one year of alleged unlawful discriminatory practce; however, where unlawful discriminatory practice is of continuing nature, date of occurrence is deemed to be any date subsequent to its inception up to date of its cessation. In determining whether a discriminatory practice is of a continuing nature, the essential factor is whether the discriminatory practice has continuing impact on the plaintiff. Plaintiff's diminished pension and its continuing impact is thus a continuing wrong. In Mendoza v. State Division of Human Rights, 74 A.D.2d 508, 424 N.Y.S.2d 447 (1980), it was not required that the complaint be filed within one year of the salary increase which was the discriminatory act complained of. In Mendoza, the plaintiff did not receive the entitled salary increase and thus the continued payment of the lower salary made the discriminatory act a continuing one. In the instant case, plaintiff's diminished pension is a parallel continuing discriminatory act.

B. Article 78 (and Continuing Wrong)

Relief, pursuant to CPLR Art. 78, may not be used when there are other available remedies at law. Corbeau v. Board of Education, 32 A.D.2d 958, 302 N.Y.S.2d 940 (1969); Matter of Phalen v. Theatrical Protective Union,

27 A.D.2d 909, revd. 22 N.Y.2d 34. In both of these cases, the court held that the Article 78 remedy was unavailable. In Corbeau, it was unavailable where there are other available remedies as in that case an action for breach of contract; and in Phalen, it was unavailable in that case since it involved a union's unfair and discriminatory practices.

Even where Article 78 proceeding is required, the 4-month limitation of the statute is not applicable for a continuing wrong. Ayman v. Teachers' Retirement Board of City of New York, 19 Misc.2d 355, 193 N.Y.S.2d 2 (1959). In Ayman, the proceeding was one which challenged use of new mortality tables which caused a reduction in annuity installments during the life of the beneficiaries. The Court held that where relief sought by petitioners charged the violation of a continuing duty imposed by the Constitution, relief sought was unaffected by the 4 months' time limitation. Further, in Ayman, 193 N.Y.S.2d at 22:

> "Argument against petition on the score of untimeliness is of no avail. For the petition charges a continuing failure of the respondents to obey the command of * * * the State Constitution * * *." (Citation omitted.)

In Art. 5, § 7 of the New York State Constitution (adopted in 1939), it is declared that after its effective date, membership in a pension or retirement system of this State, or a civil division, shall be a contractual relationship, the benefits of which shall not be diminished or impaired. In Aymen, the new

annuity tables adopted by retirement board constituted violation of the prohibition against impairment or reduction of the contractual benefit in the retirement system.

As shown above, the continuing wrong is not barred by any limitation of statute. The courts have so held in all areas.

POINT III

THIS COURT HAS JURISDICTION TO DETERMINE PLAINTIFF'S CLAIMS AGAINST DEFENDANT INSURANCE DEPARTMENT

The Supreme Court has subject matter jurisdiction in this action. "The Supreme Court is a court of original, unlimi and unqualified jurisdiction" and "competent to entertain all causes of action unless its jurisdiction has been specifically proscribed." Kagen v. Kagen, 21 N.Y.2d 532, 537.

The Court of Claims has exclusive jurisdiction over a broad list of claims against the State; however if the grievance is remedial by way of Article 78, it would be brought in the Supreme Court. As to public agencies, claims against some but not all, public authorities must be brought in the Court of Claims. The question turns on the relationship between the body involved and the State. Easley v. N.Y.S. Thruway Author 1 N.Y.2d 374, 153 N.Y.S.2d 28 (1956).

Subject-matter jurisdiction often turns on the issues of fact. Troup v. McCart, 238 F.2d 289 (5th Cir. 1956). The issues of fact in the instant action are within the jurisdiction of the Supreme Court. There are 9 defendants united in interest in this action. The claims are numerous and complex. It would be unjust to separate the claims against the Insurance Department when the claims and issues are intertwined with 8 other defendants. Separation would be wasteful and a gross disservice to justice, to the issues, and to the plaintiff in this action. Further, the significance of the allegation of conspiracy in New York law is to charge that this actionable wrong was committed jointly by defendants so that acts of one may be imputed to others because of their common purpose and intent. Thus, the 9 defendents are united in this action.

POINT IV

OPPOSITION TO AFFIDAVIT AND MEMORANDUM OF ATTORNEY FOR DEFENDANT INSURANCE DEPARTMENT

In both the Affidavit and Memorandum in support of motion, attorney for defendant reduces plaintiff's first cause of action to a failure on the part of defendants to counsel plaintiff. (Bohringer Memo., p. 4.) The first cause of action as set forth in the complaint (Bohringer Aff., Ex. A, paras.

12th-21st) sets forth the incorrect pension benefit which was granted to plaintiff, concealment on the part of all the defendants of the correct pension benefit, failure to provide information, failure to counsel, and breaches of fiduciary and contractual obligations. Attorney for defendant concludes as to the first cause of action that it does not assert claims against the Insurance Department. The Insurance Department concealed the correct pension benefit up to and including the 7th day of June, 1985, the date of its last letter to plaintiff. The Insurance Department, in addition, failed to provide material information, breached its fiduciary duty to plaintiff, and in the process discriminated against plaintiff in the commission of these acts. Attorney for defendant also dismisses the third cause of action. The Insurance Department claims to have made an investigation of plaintiff's complaints. There are many errors in plaintiff's Statements of Accounts. The Insurance Department refers to these merely as all errors have been corrected without making reference to the specific errors pointed out by plaintiff. As to the second cause of action, attorney for defendant reduces it to Insurance Department's negligent dismissal of plaintiff's membership in New York State Retirement Systems. The second cause of action includes that item; however, the cause has to do with the fraudulent process by which plaintiff was credited with her prior service and the concealment of the regulations governing

such credit. Insurance Department concealed the regulations.

Attorney for Defendant re-enforces the Insurance Department's position that everything has been calculated correctly and that all errors have been corrected. No documentation is offered and there are no references to specific claims. In addition, the documentation to support plaintiff's claims is omitted from attorney for defendant's Exhibits. In Her Exhibit C, the presentation of the complaints plus 18 attachments have been omitted; in Exhibit E, two enclosures have been omitted; in Exhibit G, seven enclosures have been omitted. The attachments and enclosures are essential to the claims made by plaintiff. In Exhibit H, the letter plaintiff received from the Insurance Department is the same as the one in Exhibit H; however, plaintiff's letter is dated June 7, 1985. In terms of the attorney for defendant's arguments, the date change assumes significance. The complete correspondence with all attachments are made available in the Exhibits attached to plaintiff's affidavit, Exs. A-M.

CONCLUSION

THIS COURT SHOULD DENY THE MOTION TO DISMISS THE COMPLAINT IN THIS ACTION

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff in Person

Dated: November 6, 1985

DEFENDANT ROSENBERG NOTICE OF MOTION TO DISMISS. PP. 439-440

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, Index No.: 20522/

Plaintiff,

-against- NOTICE OF MOTIO

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

- x

S I R S :

PLEASE TAKE NOTICE that upon the pleadings heretofore had herein, the accompanying affirmation of Ann Teresa McIntyre dated November 12, 1985, and the accompanying memorandum of law, the undersigned will move this Court at a Special Term, Part I, at the New York Supreme Court, Kings County, Brooklyn, New York on the 3rd day of December, 1985 at 9:30 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3211(a)(7), dismissing the action for

failure to state a cause of action against defendant Lewis Rosenberg, and for such other and further and different relief which as to this Court seems just and proper.

Dated: New York, NY
November 12, 1985

Yours, etc.,

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant
Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
Tel.: (212) 972-5560

TO: ALICE CLISSURAS
Plaintiff Pro Se
215 Adams Street
Brooklyn, NY 11201

FREDERICK A.O. SCHWARTZ, JR. ESQ.
Corporation Counsel
Attorney for Defendants City of New York
Teachers Retirement Board of the City of
New York and Teachers Retirement System
of the City of New York
100 Church Street
New York, NYI 10007

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for Defendants Department of
Insurance, Board of Higher Education of
the City of New York, City University of
New York and New York City Technical College
Two World Trade Center
New York, NY 10047
Att: Sue Barnett Bohringer, Esq.
Assistant Attorney General

D. NICHOLAS RUSSO, ESQ.
Attorney and Director of Legal Affairs
Defendant, Professional Staff Congress/CUNY
25 West 43rd Street
New York, NY 10036

McINTYRE AFFIRMATION IN SUPPORT OF MOTION TO DISMISS, PP. 441-44

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, Index No.: 20522/

Plaintiff,

-against- AFFIRMATION

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

- x

ANN TERESA McINTYRE, an attorney at law, duly admitte to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I make this affidavit in support of the motion on behalf of defendant Lewis Rosenberg for dismissal of the action against him under CPLR 3211(a)(7) on the basis of failure to state a cause of action.

2. Plaintiff characterizes this proceeding as an action for an accounting and for damages for alleged breaches of fiduciary duty and deprivations of other enumerated rights. A copy of the complaint is annexed as Exhibit A.

3. Defendant Rosenberg answered the complaint, denying the allegations as to him, and asserting affirmatively plaintiff's failure to state a cause of action as to him, among other things. A copy of the answer is annexed as Exhibit B.

4. An almost identical complaint was filed by plaintiff in the United States District Court for the Eastern District of New York. The only difference between the complaints is that the eighth and ninth paragraphs of the complaint served in the action before this Court allege presenting notices of claim to defendants City of New York, Teachers' Retirement Board of the City of New York [Retirement Board], Teachers' Retirement System of the City of New York [Retirement System], Board of Higher Education of the City of New York, City University of New York, and New York City Technical College, and the eighth and ninth paragraphs of the federal complaint allege compliance with the requirements of 42 U.S.C. §2000e-5.

5. Plaintiff, a former teacher who retired on September 1, 1982, complains at length concerning alleged inaccurate miscalculation of pension benefits and that various defendants failed to counsel her prior to retirement about certain pension options.

6. The claim against defendant Rosenberg appears in paragraph FORTY-FIFTH of plaintiff's complaint. In that paragraph plaintiff alleges that the defendant Union (Professional Staff Congress) retained defendant's law firm to represent her; that plaintiff met defendant Rosenberg on February 15, 1983; that defendant Rosenberg sent plaintiff a letter on April 5, 1983, informing her that he would not continue to represent her and in which he expressed concern about a short statute of limitations which may be applicable.

7. Plaintiff claims in paragraph FORTY-FIFTH(G) that defendant Rosenberg was negligent in the conduct of her case, alleging he took no steps; had no file in furtherance of her case; he did not discuss her case or her legal rights with her; he withheld information from plaintiff as to her pension benefits and legal rights; and terminated representation of plaintiff with no direction.

8. It appears that plaintiff is attempting to assert a cause of action against defendant Rosenberg for legal malpractice. However, even taking plaintiff's allegations as true, she has failed to state a cause of action for malpractice. As is shown by the accompanying memorandum of law, there is no claim that defendant Rosenberg's alleged conduct caused or contributed to plaintiff's alleged injury.

9. Co-defendants have also moved to dismiss this action on the basis that it is time barred because the action is in essence an Article 78 proceeding which must be brought within four months after the date the determination to be reviewed becomes final. Therefore, not only is an Article 78 proceeding time-barred, but defendant Rosenberg is not a proper party defendant to an Article 78 proceeding. To the extent that any of the grounds for dismissal asserted by co-defendants are applicable to defendant Rosenberg, those grounds are incorporated herein and the arguments of co-defendants in support thereof are adopted for the purposes of this motion.

WHEREFORE, defendant Lewis Rosenberg prays that an order be granted dismissing this action as to him, and that this Court grant such other, further and different relief which as to this Court seems just and proper.

Dated: New York, NY
November 12, 1985

Ann Teresa McIntyre

McINTYRE. AFFIRMATION (OF SUPPORT OF MOTION ON BEHALF OF DEFENDANT ROSENBERG TO DISMISS COMPLAINT)

EXHIBIT A: SUPREME COURT SUMMONS AND COMPLAINT

(SUMMONS AND COMPLAINT HAVE BEEN OMITTED HERE SINCE THEY APPEAR ON pp. 67-101 HEREIN.)

AFFIRMATION (OF SUPPORT OF MOTION ON BEHALF OF DEFENDANT ROSENBERG TO DISMISS COMPLAINT)

EXHIBIT B: ANSWER (OF DEFENDANT ROSENBERG)

(ANSWER HAS BEEN OMITTED HERE SINCE IT APPEARS ON pp. 102-108, HEREIN.)

DEFENDANT ROSENBERG. MEMORANDUM IN SUPPORT OF MOTION TO DISMISS.
PP. 447-452

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, Index No.: 20522/8

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

- x

MEMORANDUM OF LAW ON
BEHALF OF DEFENDANT
LEWIS ROSENBERG

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant
420 Lexington Avenue
New York, NY 10170
Tel.: (212) 972-5560

Preliminary Statement

This action was brought by a teacher formerly employed by New York City Technical College (the "College"), who retired on September 1, 1982. Plaintiff alleges her causes of action to entail four areas: (1) calculation of pension amount; (2) credit for prior service; (3) financial records; and (4) deprivation of other rights. (Complaint ¶ TENTH). Plaintiff alleges that defendants have impermissibly discriminated against her in favor of "male teachers and/or non-Christian teachers" (Complaint ¶¶ EIGHTEENTH-TWENTIETH).

Plaintiff makes various claims against defendants City of New York, the City's Retirement Board and System, the Board of Higher Education, her former employer, the City University of New York, New York City Technical College, her Union, the Department of Insurance and Lewis Rosenberg.

Plaintiff alleges she is seeking remedies for discrimination in compensation and pension benefits because of her sex and religion, in violation of federal statutes.

This memorandum will show that plaintiff fails to state a cause of action against defendant Rosenberg.

STATEMENT OF FACTS

Plaintiff was a faculty member of the College from September 1, 1948 until her retirement on September 1, 1982 (Complaint at ¶ THIRD). She began to receive pension checks on

January 2, 1983 (id. at ¶ FOURTEENTH), which were not accompanied by an explanation of the computational method (id. at ¶ FIFTEENTH). In addition, she did not receive the bonus for thirty years of service to which she claims she is entitled (id. at ¶ SEVENTEENTH). She generally claims that, before retiring, she was not informed either about this thirty-year bonus or about a possible thirty-five year benefit and that all defendants discriminated against her in not so informing her (id. at ¶ NINETEENTH).

Plaintiff's claim against defendant Rosenberg seems to come under the heading "deprivation of other rights". In ¶ FORTY-FIFTH of the Complaint plaintiff alleges that the defendant Union (Professional Staff Congress) retained defendant's law firm to represent her; that plaintiff met defendant Rosenberg on February 15, 1983; that defendant Rosenberg sent plaintiff a letter on April 5, 1983, informing her that he would not continue to represent her, and in which he expressed concern about a short statute of limitations which may be applicable.

Plaintiff claims in paragraph FORTY-FIFTH(G) that defendant Rosenberg was negligent in the conduct of her case, alleging he took no steps; had no file in furtherance of her case, he did not discuss her case or her legal rights with her; he withheld information from plaintiff as to her pension benefits and legal rights; and terminated representation of plaintiff with no direction.

Argument

PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION FOR NEGLIGENCE AGAINST DEFENDANT ROSENBERG FOR WHICH RELIEF CAN BE GRANTED

Plaintiff's claim is basically that she has been damaged as a result of inaccurate calculation of her pension benefits (FIRST CAUSE OF ACTION), she has been denied credit for prior service (SECOND CAUSE OF ACTION), the refusal of the defendant Teachers' Retirement System to provide her with financial records (THIRD CAUSE OF ACTION), and that she has been deprived of other rights (FOURTH CAUSE OF ACTION).

The FIRST through THIRD CAUSES OF ACTION are not alleged as against defendant Rosenberg. The FOURTH CAUSE OF ACTION for deprivation of other rights contains allegations against the other defendants and defendant Rosenberg (¶ FORTY-FIFTH).

The plaintiff alleges that defendant Rosenberg deprived her of certain rights, alleging that the defendant Union retained his firm to represent her, she met with Defendant Rosenberg on February 15, that on April 5, 1983 defendant Rosenberg sent plaintiff a letter informing her he would not continue as her attorney, and informed her that a short Statute of Limitations may be applicable.

Plaintiff makes the following claim against defendant Rosenberg in subparagraph (G):

> By reason of all of the aforesaid, defendant Lewis Rosenberg was negligent in the conduct of plaintiff's case in that he took no steps and had no file in furtherance of plaintiff's case. He did not discuss plaintiff's case and legal rights

> with her. He withheld information from plaintiff as to her pension benefits and legal rights. He terminated representation of plaintiff with no direction.

Even taking all of plaintiff's claims against defendant Rosenberg as true, the complaint fails to state a claim for legal malpractice against defendant Rosenberg, and must be dismissed.

In order to state a claim for attorney malpractice plaintiff must establish that the loss was proximately caused by the attorney's negligence. Newman v. Silver, 553 F.Supp. 485 (S.D.N.Y. 1982); Titsworth v. Mondo, 95 Misc.2d 233, 407 N.Y.S.2d 793 (Sup. Ct. Monroe Co. 1978). In other words:

> Before a plaintiff can succeed in an action for legal malpractice, he must be able to demonstrate that if not for the alleged acts of malpractice, he would have been able to recover or proceed in a manner other than that which actually eventuated.

Becker v. Julien, Blitz & Schlesinger, P.C., 95 Misc.2d 64, 406 N.Y.S.2d 412, 414 (Sup. Ct. N.Y. Co. 1977).

Any injuries plaintiff may have suffered were sustained before plaintiff ever met defendant Rosenberg. Plaintiff retired on September 1, 1982 (Complaint ¶ THIRD); she began to receive pension checks on January 3, 1983 (¶ FOURTEENTH). She also claims she was not informed before retirement about a thirty year or thirty-five year bonus or benefit and that defendants discriminated against her for failing to provide this information.

By her own admission, plaintiff did not meet defendant Rosenberg until February 15, 1983. He can hardly have caused or contributed to the failure to inform plaintiff of various pension benefits before her retirement on September 1, 1982.

Plaintiff claims defendant Rosenberg was negligent in the conduct of her case. However, plaintiff's allegations fail to state a claim against defendant Rosenberg because plaintiff has not and cannot claim that defendant Rosenberg's actions or inactions caused her any injury, or that she would have been able to recover or proceed in any manner other than what has eventuated as a result of any of defendant Rosenberg's acts. Becker v. Julian, Blitz & Schlesinger, P.C., supra.

Conclusion

Plaintiff's complaint as against defendant Lewis Rosenberg should be dismissed for failure to state a cause of action.

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant
Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
Tel.: (212) 972-5560

sp 11-11

DEFENDANT ROSENBERG. AMENDED NOTICE OF MOTION TO DISMISS.

PP. 453-454

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Index No.: 20522/8

Plaintiff,

-against-

AMENDED
NOTICE OF MOTION

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

- x

S I R S :

PLEASE TAKE NOTICE that upon the pleadings heretofore had herein, the accompanying affirmation of Ann Teresa McIntyre dated November 12, 1985, and the accompanying memorandum of la the undersigned will move this Court at a Special Term, Part I, at the New York Supreme Court, Kings County, Brooklyn, New York on the 16th day of December, 1985 at 9:30 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3211(a)(7), dismissing the action for

failure to state a cause of action against defendant Lewis Rosenberg, and for such other and further and different relief which as to this Court seems just and proper.

Dated: New York, NY
November 20, 1985

Yours, etc.,

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant
Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
Tel.: (212) 972-5560

TO: ALICE CLISSURAS
Plaintiff Pro Se
215 Adams Street
Brooklyn, NY 11201

FREDERICK A.O. SCHWARTZ, JR. ESQ.
Corporation Counsel
Attorney for Defendants City of New York
Teachers Retirement Board of the City of
New York and Teachers Retirement System
of the City of New York
100 Church Street
New York, NYI 10007

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for Defendants Department of
Insurance, Board of Higher Education of
the City of New York, City University of
New York and New York City Technical College
Two World Trade Center
New York, NY 10047
Att: Sue Barnett Bohringer, Esq.
Assistant Attorney General

D. NICHOLAS RUSSO, ESQ.
Attorney and Director of Legal Affairs
Defendant, Professional Staff Congress/CUNY
25 West 43rd Street
New York, NY 10036

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS.
PP. 455-463

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- : AFFIDAVIT IN OPPOSITION TO MOTION OF DEFENDANT LEWIS ROSENBERG TO DISMISS COMPLAINT

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, : Index No. 20522/85

Defendants. :

- -x

STATE OF NEW YORK)
ss.:
COUNTY OF KINGS)

ALICE CLISSURAS, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action, and I am representing myself in this action, to my disadvantage, due to the unwillingness of attorneys to represent me. I have made extensive efforts to retain an attorney which include meeting with over 30 attorneys, approaching the President of the Bar Association and the New York County Lawyers' Association for referrals, and contacting several law schools, all to no avail.

2. This affidavit is made in opposition to the motion to dismiss the complaint made by the defendant Lewis Rosenberg and is made on the grounds that the complaint does state causes of action against said defendant Lewis Rosenberg and that plaintiff's causes of action are not time barred.

3. I was employed at New York City Technical College (hereinafter "College") for 34 continuous years from September 1, 1948, to my effective date of retirement, September 1, 1982. My pension was calculated for 29 years of service and not for 34 years of service as it should have been calculated. Using 29 years instead of 34 is fraudulent. In addition, the use of the 29 years was concealed from plaintiff. In the Report of Actuary, there is no indication of years of service or indication of the pension plan by which it was calculated. Plaintiff received the Report of Actuary on January 17, 1983. Then, in a letter dated February 7, 1983, the Chief Actuary of the Teachers' Retirement System of the City of New York (hereinafter "Retirement System") set forth a computation of the pension which differed totally with the three components of the pension on the Report of Actuary (the Annuity, the Regular Pension, and the I.T.H.P. Pension) but arrived at the same total pension and appeared to follow the formula in §B20-41.2 of the Administrative Code of the City of New York. A copy of that Section of the Code was enclosed with his letter. Neither the Report of Actuary nor the February 7, 1983, letter used a calculation which was based on 34 years of

service and neither one showed the actual formula which was used for plaintiff's pension. Since the Board of Higher Education of the City of New York is a corporation created by New York State law, the pension plan for City University faculty is in the New York State Education Law. Plaintiff's pension was calculated on the basis of the State Law percentages but for 29 years. This actual calculation was concealed in figures used in the Report of Actuary which have yet to be explained and in figures used in the February 7, 1983, letter which are explained under the semblance of a §B20-41.2 formula. Both versions, in addition, include material errors. The Report of Actuary and the February 7, 1983, letter are attached hereto as "Exhibit H."

4. As to the events described in paragraph No. 3 above, plaintiff had no knowledge prior to retirement or thereafter of the pension plan applicable to her according to law, she had not heard of the Administrative Code until she was misled by defendants into believing that the pension plan was in the Code, she was not aware that she was being deprived of five years of her service in the pension calculation, and she was not aware of the State Education Law plan that was used by the Retirement System to calculate her pension for 29 years of service until well into 1985. As late as July, 1985, defendant City University of New York fraudulently certified plaintiff's service at the College as having ended in 1977 instead of 1982. The significance of the 5-year difference is that it reduces

plaintiff's service from 34 years to 29 years. Thus, she was given a pension calculated under State Law for 29 years of service and deprived of the State Law plan to be applied for those with 30 years of service and upwards. The result of all of this is that plaintiff has been deprived of upwards of $10,000 per year in the amount of her pension.

5. When the Pension Officer at the Professional Staff Congress/CUNY, examined the Report of Actuary and the Retirement System's certification of plaintiff's service as 34 years of New York City service (attached hereto as "Exhibit I"), she sent plaintiff a letter, dated February 2, 1983, in which she informed plaintiff that the Professional Staff Congress/CUNY (hereinafter the "Union") had retained the firm of Shapiro, Shiff, Beilly, Rosenberg & Fox to represent plaintiff in order to gain pension information and to correct errors in the pension calculations. On February 4, 1983, defendant Lewis Rosenberg confirmed this and cautioned plaintiff as to urgency in the avoidance of the expiration of periods of limitation. The February 2 and February 4 letters are attached hereto as "Exhibit J."

6. Defendant Rosenberg met with plaintiff only once, on February 15, 1983. Plaintiff detailed the problems to defendant Rosenberg as she knew them to be at that time. She supplied documentation which included the Report of Actuary, the February 7, 1983, letter of the Chief Actuary of the Retirement System, and the certificate of the Retirement System which

certified her service as 34 years of New York City service and other documentation. At the February 15, 1983, meeting, defendant Rosenberg examined plaintiff's papers.

7. At the time of the meeting with Defendant Rosenber plaintiff did not know what was wrong with the calculation on the Report of Actuary and what the errors were in the Chief Actuary's version. Plaintiff was under the impression that the plan in the Administrative Code applied to her as she had been told by the Retirement System. Defendant Rosenberg did not inform plaintiff that the wrong pension formula was use to calculate her pension. Plaintiff did not know that for 30 years plus of service there are special provisions under the La for calculating allowances on thirty-year retirement. This was concealed from plaintiff by all defendants in this action.

8. During the February 15 meeting with Defendant Rosenberg, he mentioned that there was a four-month statute of limitations on an Article 78 proceeding. That was the first ti that plaintiff had ever heard of such a proceeding; however, Defendant Rosenberg did not explain what it involved or what rights or choices as to courses of action plaintiff had. Plaintiff had to enroll in law school in order to gain some knowledg with which to bring an action. As indicated in paragraph No. 1 above, she had no other choice. In the Spring 1985 semester, s gained information in the Torts class as to the statute of limitations and torts which is a 3-year limitation. In the Summer

1985 semester, plaintiff gained information in the New York Civil Practice class as to how to proceed in a civil action according to the Rules of the CPLR. In addition, this was the first time she had available to her an analysis of the Article 78 proceeding and its inappropriateness and unavailability to the causes of action herein.

9. After the February 15 meeting with Defendant Rosenberg, he never contacted plaintiff again. If he thought that the four-month limitation applied to plaintiff's action, he did nothing to avoid its expiration. On March 25, 1983, Defendant Rosenberg's associate, Richard Rothman, called plaintiff to inform her that he had a folder for her case with nothing in it, that a New Jersey actuary had been contacted who it turned out was a very good friend of the Chief Actuary of the Pension System, and that he, the associate, and Defendant Rosenberg differed as to the applicable statute of limitations to plaintiff's action. Mr. Rothman viewed it as a 3-year statute while Defendant Rosenberg viewed it as a 4-month statute. At that time plaintiff did not realize that the 3-year statute was the statute as to torts. She asked Mr. Rothman to get back to her on the matter of the statute of limitations; however, there was no further response from either attorney until April 5, 1983, when Defendant Rosenberg sent a letter to plaintiff to inform her that he would not continue to represent her. The April 5 letter is attached hereto as "Exhibit K." Then, plaintiff expended much time to gain

information and direction as to how to proceed, to no avail.

10. After April 5, 1983, the Union stopped meeting and talking with plaintiff and became very abusive about plaintiff's seeking information. From that date forward, plaintiff could not retain an attorney after countless attempts. She was blocked from using public resources that would be helpf to her and from filing claims with governmental agencies. She was forced to enroll in law school in order to gain the knowled she needed to bring this action pro se. And, she was under pressure to begin the action in 1985 in order to avoid the expi ration of the 3-year statute of limitations.

11. Defendant Rosenberg ended his representation of plaintiff with another warning about the short statute of limi tations. Plaintiff attempted frantically to retain another attorney, again to no avail. This pressure has continued and has steadily increased to the present since, although plaintiff has not been able to retain an attorney, the defendants did not seem to have any difficulty in this respect.

12. Concealment on the part of Defendant Rosenberg was not limited to the pension plan applicable to plaintiff. He also concealed the rules according to which plaintiff should ha been granted credit for prior service and the method by which t purchase money should have been credited. The circumstances of these concealments follow the pattern of the events described above for the pension plan since plaintiff discussed prior

service at the April 5, 1983, meeting with Defendant Rosenberg. Defendant Rosenberg did not reveal any of the miscalculations or misapplication of rules as to plaintiff's pension.

13. The circumstances and events in this action point to a conspiracy on the part of the defendants to deprive plaintiff of her pension benefits by concealing the causes of action. Not one defendant has stated to date the pension plan which pertains to plaintiff's qualifications. Not one defendant has disputed any of the facts plaintiff sets forth regarding the improper crediting of her prior service. Moreover, not one defendant has set forth the correct rules for the crediting of that service. Not one defendant has provided any documentation to dispute plaintiff's claims as to her pension, her prior service, her Statements of Accounts, and her deprived rights.

14. Defendant Rosenberg as stated above was retained to gain pension information for plaintiff and to correct errors in the pension calculations. (See Exhibit J hereto attached.) He did not give plaintiff any pension information and he did not correct errors in the pension calculations.

15. The defendants in this action are joined in a conspiracy to deprive plaintiff of her pension benefits. The process of deprivation includes on the part of the defendants discrimination against plaintiff on the basis of sex and religion, fraud, gross negligence, breach of contract, and breach of fiduciary duty. As to conspiracy, the acts of one defendant

are imputed as the acts of all defendants.

16. In this action, discovery is essential to its resolution. A statement of the pension plan by defendants is essential. Plaintiff's records must be produced.

17. The complaint sets forth in detail the facts and the causes of action. The above is not intended as a full statement of all the claims and causes of action.

WHEREFORE, plaintiff prays that the motion for dismissal of the complaint as to Defendant Lewis Rosenberg be denied.

Dated: Brooklyn, New York, December 11, 1985.

ALICE CLISSURAS

Sworn to before me this

day of December, 1985

CLISSURAS, EXHIBIT H, AFFIDAVIT IN OPPOSITION, PP. 464-465

TEACHERS' RETIREMENT SYSTEM, CITY OF NEW YORK — 40 WORTH STREET, NEW YORK, N.Y. 10013
(PLEASE RETAIN THIS COPY FOR INCOME TAX PURPOSES)

REPORT OF ACTUARY

To The Teachers' Retirement Board
of the City of New York:

12-1-1982

I hereby certify that in the event of the Service/~~Disability~~ Retirement on September 1, 1982
of Alice Clissuras registered as an active member No. 130358 the following regular retirement
allowance may be granted to ~~him/her~~ under the provisions of law and on the basis of the mortality tables last approved by the Retirement
Board, with four per cent compound interest, with payments to begin immediately/~~on~~

Member's Date of Birth August 23, 1926 Salary Base Used $ 42,643

FUND FROM WHICH PAYABLE	Initial Reserve	Annual Amount	Monthly Amount
Annuity Reserve Fund	$ 4,286.24	$ 310.56	$ 25.88
Regular Pension	$ 390,257.05	$ 28,273.35	$ 2,356.11
I.T.H.P. Pension	$ 35,903.78	$ 2,601.12	$ 216.76
Pension Reserve Fund No. 1*	$ 426,160.83	$ 30,874.47	
TOTAL FIXED ALLOWANCE	$ 430,447.07	$ 31,185.03	$ 2598.75
Variable Annuity Reserve Fund	——— units	——— units	——— units
Variable Pension Reserve Fund	——— units	——— units	——— units
TOTAL VARIABLE ALLOWANCE	——— units	——— units	——— units

*Includes $ ——— which should be transferred from the Military Contribution Fund.

Figured by PK Date 12-1-82 Checked by [signature] Date 12-1-82

FIRST CHECK PAID 12 31 82

[signature]
CHIEF ACTUARY, RETIREMENT BOARD

SUPPLEMENTARY REPORT OF ACTUARY

On ——— 19__, the above named member filed in this office an election to have his/her allowance paid u
ne provisions of Option No. ——— and nominated ———
s beneficiary. As a result of such election the following allowances are payable in lieu of those shown above.

Joint Date of Birth ———

FUND FROM WHICH PAYABLE	ANNUAL ALLOWANCE	MONTHLY ALLOWANCE
Annuity Reserve Fund	$ ———	$ ———
Regular Pension	$ ———	$ ———
I.T.H.P. Pension	$ ———	$ ———
Pension Reserve Fund No. 1	$ ———	
TOTAL FIXED ALLOWANCE	$ ———	$ ———
Variable Annuity Reserve Fund	——— units	——— units
Variable Pension Reserve Fund	——— units	——— units
TOTAL VARIABLE ALLOWANCE	units	units

Figured by ——— Date ——— Checked by ——— Date ———

FOR INCOME TAX PURPOSES ONLY
COST OF OUTSIDE SERVICE $ 2501.54
CITY CONTRIBUTION PRIOR TO 1939 $ ———
MEMBER'S TOTAL CONTRIBUTIONS $ ———
(CONSIDERATION PAID)

UNIT VALUE AT DATE OF RETIREMENT ———

———
CHIEF ACTUARY, RETIREMENT BOARD

STENCILED
12-29-82

FINAL DISPOSITION

At the meeting of the Teachers' Retirement Board on Jan 20, 1983 the retirement of
Alice Clissuras from active service was approved and the annual retirement
allowance of $ 31,185.03 and -- units, as stated above, to be paid in monthly installments, was
authorized, with payments to begin immediately/~~on~~

The said retirement to be effective as of September 1, 1982

Retirement No. 60876
73:72:72 WBL # 118770

Walter F. Sullivan
EXECUTIVE DIRECTOR, RETIREMENT BOARD

(over)

The City of New York

TEACHERS' RETIREMENT SYSTEM
Office of the Actuary
40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-7677
JONATHAN SCHWARTZ, Chief Actuary

RETIREMENT BOARD
VICTOR F. CONDELLO
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

Refer To Registry No R60876

FEB 7 1983

Miss Alice Clissuras
P.O. Box 1686
Brooklyn, N.Y. 11201

Dear Miss Clissuras:

This is in response to your recent inquiry relative to your retirement allowance. Your regular unmodified or maximum retirement allowance payable on retirement September 1, 1982 is $31,185.03 per annum computed as follows:

(1)	50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	=	$ 21,321.50
(2)	Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= (plus)	1,279.29
(3)	Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643,00	= (plus)	8,336.70
(4)	Plus the actuarial equivalent of the Increased-Take-Home-Pay accumulated after 20 years of Career Pension Plan service $19,274.66 ÷ 13.803	= (plus)	1,396.41
(5)	Less the actuarial equivalent of the deficit in the Annuity Savings Fund $15,857.85 ÷ 13.803	= (minus)	1,148.87
	Total Maximum Allowance		$31,185.03

Very truly yours,
Jonathan Schwartz
Chief Actuary
by: Irving Hirsch
Chief, Benefit Certification Division

CLISSURAS. EXHIBIT 1. AFFIDAVIT TO DISMISS

Modified

The City of New York

TEACHERS' RETIREMENT SYSTEM
40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-6676

WALLACE F. SULLIVAN,
Executive Director

DONALD S. MILLER, *Deputy Executive Director*
PATRICK J. KIERNAN, *Assistant Director*
DWIGHT R. KEARNS, *Assistant Director*

RETIREMENT BOARD
VICTOR F. CONDELLO
Chairman
BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

AE CLISSURAS
215 ADAMS STREET
BROOKLYN, NY 11201

T6/30358
Membership Number

AUGUST 11 1981
Date

Dear Member

For the purpose of establishing your prior service credit for all allowable New York City service rendered by you prior to the date you began to contribute to this system, the Retirement Board has evaluated your prior service claims and is sending herewith a report of its findings.

Your evaluated prior service claims amount to

20	02	01	for New York City Service rendered before	11-01-68
Years	Months	Days		(Date Your Contributions Began)

Will you carefully inspect the enclosed records, and if any service has been omitted which you think should have been included, please notify us at once.

If you agree with the findings shown on the work sheet, please sign the letter enclosed and return it at once.

If no reply is received within two weeks either accepting the findings or requesting further investigation, your prior service allowance will be presented to the Retirement Board for its approval.

A prompt reply will be mutually helpful in expediting the issuance of your prior service certificate.

Sincerely,

Signed & returned 8/16/81

Executive Director

enc.

OUR EVALUATION PARALLELS THE SERVICE CLAIMED BY YOU. HENCE NO WORKSHEET IS ENC.
MEMBER'S COPY

[illegible]

CLISSURAS EXHIBIT J. AFFIDAVIT TO DISMISS, PP. 467-468

PSCcuny | Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

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D. Nicholas Ruasa
Director, Legal Affairs
Carol Sims
Associate Director, Communications
Beryl Weinberg
Director, Staff Relations
Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

February 2, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

This is to inform you that the Professional Staff Congress/ CUNY has decided to support a legal action for you against the New York City Teachers Retirement System in order to gain the information you desire and to correct any errors that have been made in your calculations.

We have retained the firm Shapiro, Shiff, Beilly, Rosenberg and Fox to represent you in this matter. You should contact Louis Rosenberg, Esq. His office is located at 225 Broadway, New York, New York, 10007. Please call Mr. Rosenberg at 267-9020 for an appointment at your earliest convenience.

I trust you find this satisfactory.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
cc: Louis Rosenberg, Esq.

American Association of University Professors
American Federation of Teachers Local 2334 • New York State AFL-CIO
New York State United Teachers • New York City Central Labor Council

LAW OFFICES

ABRAHAM L. SHAPIRO
SIDNEY FOX
HERBERT SHIFF
STEWART L. BEILLY
LEWIS ROSENBERG*
GERALD RICHMAN**
THEODORE T. WEISEN**
HAROLD D. KOZUPSKY
MORRIS S. WOLIN
RAYMOND S. FENSKO
LAWRENCE S. SIMON
RICHARD J. HOFFMAN
IRWIN B. NEWMAN
MAX GOLDBERG
DOROTHY S. VIVAS
DAVID E. DREXLER
RICHARD GROSS
STANLEY H. ALBERT***
BRIAN BROWN
BETH SHAPIRO
ROY J. KAHLIN
DANNY WASHOR

SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX

225 BROADWAY

NEW YORK, N.Y. 10007

AREA CODE 212
267-9020

LESTER HOLTZMAN
COUNSEL

*ADMITTED TO MASS. BAR
**ADMITTED TO N.J. BAR
***ADMITTED TO FLORIDA BAR

February 4, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. s-10465

Dear Professor Clissuras:

I assume by the time that this letter reaches you, you will have been advised by Beryl Weinberg of Professional Staff Congress/CUNY that we are to act as your attorneys in connection with the dispute you have with the New York City Teachers Retirement System.

Because that body is a governmental agency, there are frequently controlling laws and regulations which require action to be instituted very promptly. I accordingly request that you contact me at your earliest possible convenience so as to preclude the expiration of any period of limitation concerning rights you might have.

Thank you for your cooperation.

Very truly yours,

Lewis Rosenberg/gld

LEWIS ROSENBERG

LR/gld

CLISSURAS, EXHIBIT K, AFFIDAVIT TO DISMISS

LAW OFFICES

ABRAHAM L. SHAPIRO
SIDNEY FOX
HERBERT SHIFF
STEWART L. DEILLY
LEWIS ROSENBERG*
GERALD RICHMAN**
THEODORE T. WEISER**
HAROLD D. KOZUPSKY
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BRIAN BROWN
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SHAPIRO, SHIFF, DEILLY, ROSENBERG & FOX

225 BROADWAY
NEW YORK, N. Y. 10007

AREA CODE 212
267-9020

LESTER HOLTZMAN
COUNSEL

*ADMITTED TO D.C. BAR
**ADMITTED TO N. J. BAR
***ADMITTED TO FLORIDA BAR

April 5, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. S-10465

Dear Professor Clissuras:

I have been unsuccessful in attempting to reach you by telephone and, accordingly, am writing you this letter.

From my conversations with Richard Rothman, it is evident that you have a complete lack of confidence in the actuary, who we believe could be helpful in setting forth the facts necessary to analyze your claims for retirement benefits under the Applicable Retirement System. As you know from my advice, it is impossible to proceed in your matter without an expert opinion.

Richard Rothman also tells me that you expressed a lack of confidence in our ability to proceed with your case.

I must reluctantly conclude that it is impossible for us to continue as your attorneys. I, therefore, suggest you make other arrangements for representation in this matter. Please also be referred to our earlier advice concerning a short Statute of Limitations which may be applicable.

Very truly yours,

LEWIS ROSENBERG

LR/gld

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

cc: Beryl Weinberg

PLAINTIFF'S MEMORANDUM IN OPPOSITION, PP. 470-481

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, :

Plaintiff, :

-against- : Index No. 20522/85

CITY OF NEW YORK, et al., :

Defendants. :

- x

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT LEWIS ROSENBERG'S MOTION TO DISMISS COMPLAINT

PREFATORY STATEMENT

Plaintiff, pro se, submits this memorandum in opposition to defendant Lewis Rosenberg's motion to dismiss the complaint on the grounds that the complaint does state causes of action against said defendant Lewis Rosenberg and that plaintiff's causes of action are not time barred. Among the causes of action against said defendant, the following are included: conspiracy, concealment, breach of contractual and fiduciary duty, and deprivation of rights.

As a brief statement of plaintiff's action, plaintiff sets forth that she was employed as a teacher at New York City Technical College (hereinafter "College") for 34 continuous years from September 1, 1948, to September 1, 1982, the effective date of plaintiff's retirement. Plaintiff's pension benefits were not computed correctly and plaintiff was and is being deprived of substantial payroll and pension benefit amounts. The pivotal deprivation consists of the failure of the Teachers' Retirement System of the City of New York (hereinafter "Retirement System") to calculate plaintiff's pension for 34 years of New York City service and instead the Pension System calculated her pension on the basis of 29 years of service, which resulted in a loss of five years of pension benefits and a loss of the 30-year retirement special allowance, among other losses. None of the defendants, including defendant Lewis Rosenberg, informed plaintiff of the 30-year retirement allowance and of other benefit omissions, losses, inaccuracies, and improprieties. These causes of action were and are still being concealed to date by all of the defendants. (Complaint, paras. EIGHTEENTH and NINETEENTH of FIRST CAUSE OF ACTION.) Further, all of the defendants, including defendant Lewis Rosenberg, have concealed and continue to conceal the improper process by which plaintiff was required to purchase service credit for which she should have been given automatic credit. The errors in plaintiff's financial records have been concealed and continue to be conceal

by all defendants. And, plaintiff has been deprived of her rights by all defendants, including defendant Lewis Rosenberg, by virtue of all of the foregoing.

Moreover, the circumstances of plaintiff's retirement process point to a conspiracy on the part of all of the defendants, including Lewis Rosenberg, to conceal the correct pension benefits, fraudulently, in breach of their contractual and fiduciary duties and relationships. For all of the causes of action to plaintiff's damage, plaintiff seeks judgment as set forth in the complaint, as against defendant Lewis Rosenberg, the City Defendants (the City of New York, the Retirement Board, and the Retirement System), the City University Defendants (Board of Higher Education, City University, and the College), the Professional Staff Congress/CUNY (the Union), and the Department of Insurance of the State of New York.

STATEMENT OF FACTS

Plaintiff was employed as a teacher at defendant College for 34 continuous years. Prior to retirement, the Retirement System would not answer any questions regarding the pension benefits and plaintiff was instructed to go to her Union for any needed information. Plaintiff retired on September 1, 1982, and received her first pension check on or about January 2, 1983, with no explanation of the amount and no accounting of plaintiff's moneys. In response to plaintiff's questions, as to the amount

of the pension, plaintiff received two versions of the calculation from the Retirement System. A third version was received at a later date; however, this was after plaintiff's contact with Defendant Rosenberg. The two versions of the calculation from the Retirement System do not use the pension plan under the New York State Education Law which should have been used for plaintiff. In addition, the two versions include errors and/or omissions and do not provide for a 30-year retirement allowance. On February 2, 1983, Ms. Beryl Weinberg, Staff Relations Director (and Pension Officer) of defendant Union, sent plaintiff a letter informing her that the Union had retained defendant Lewis Rosenberg to represent her for the purpose of gaining pension information and to correct errors in the pension calculations. (Clissuras Aff., Ex. J) Defendant Rosenberg met with plaintiff once on February 15, 1983. She detailed the problems as she knew them at that time and she supported these with the documentation which she had at that point. Defendant Rosenberg did not discuss pleaintiff's benefits with her; he did not discuss plaintiff's rights or choices; he did not give her any direction. At the end of the meeting, he told her to get an actuary. From that point on, defendant Rosenberg did not contact plaintiff until March 25, 1983, when his associate, Richard Rothman, called plaintiff to inform her essentially that nothing had been done for her case and that an actuary had been contacted, who, as the actuary informed plaintiff, was a very good friend of the Chief

Actuary of the Pension System. Then, defendant Rosenberg sent plaintiff a letter, dated April 5, 1983, in which he informed plaintiff that he would not continue to represent her. In the two letters which plaintiff received from defendant Rosenberg, he expressed concern about a short statute of limitations which may be applicable but about which he did nothing in terms of possible effects on plaintiff's action. Further, Mr. Rothman differed with Defendant Rosenberg as to the applicable statute and viewed it as a 3-year statute of limitations. After April 5, 1983, the Union stopped meeting with plaintiff and became abusive about plaintiff's seeking information. From that date forward, plaintiff sought another attorney to no avail. She was blocked from using public resources and from filing claims with governmental agencies. She was forced to enroll in law school due to the unwillingness of attorneys to represent her. And, she was forced to begin the action in 1985 in order to avoid the expiration of the 3-year statute of limitations.

The causes of action have been and are to date being concealed by all of the defendants, including defendant Rosenberg. Plaintiff did not know that she was being discriminated against as to her pension benefits until she discovered well after retirement that male and/or non-Christian colleagues were receiving such benefits as the 30-year retirement allowance, a benefit about which plaintiff was totally uninformed. Plaintiff did not know as late as July, 1985, that her pension had been calculated

for 29 years of service. All of the defendants concealed this, including Defendant Rosenberg. In July of 1985, defendant City University of New York certified plaintiff's service as ending in 1977, which is 29 years after plaintiff's date of appointment. At that point, plaintiff was able to piece together the different points of information she had gained at various times after her retirement to arrive at the method that had been used to calculate her pension. The July, 1985. certification by City University is attached hereto as "Exhibit R." Then, in August of 1985, plaintiff commenced this action. At no time, to date, has any defendant stated what the pension plan is or what the rules are for crediting plaintiff's prior service. No defendant has disputed any of the above statements of facts and no defendant has provided any documentation to dispute the statements of facts.

Thus, as to the causes of action as set forth in the four major areas in the complaint and defendant Rosenberg, defendant Rosenberg concealed for the first cause of action the pension plan which should have been used to determine plaintiff's pension, for the second cause of action the regulations for granting credit for plaintiff's prior service for which credit should have been given automatically, and for the third cause of action the errors in plaintiff's Statements of Accounts which have not been corrected. As to the fourth cause of action, the deprivation of rights, defendant Rosenberg breached his contractual and fiduciary duties to plaintiff; he deprived plaintiff

of her rights to information as to the nature of her case and her causes of action; and defendant Rosenberg discriminated against plaintiff by denying her equal protection of laws enjoyed by others in similar circumstances. Finally, all of the above circumstances point to a conspiracy on the part of all of the defendants to deprive plaintiff of her maximum pension benefits by concealing the nature and amount of those benefits.

POINT I

THE COMPLAINT SETS FORTH CAUSES OF ACTION IN FOUR MAJOR AREAS

As to the first cause of action, essentially the calculation of plaintiff's pension, the defendants fraudulently concealed the pension plan which should have been applied to calculate plaintiff's pension. Since the wrong pension plan was applied and the wrong years of service, plaintiff was deprived of her maximum and correct pension benefits.

The elements required for this first cause of action as to fraud, all of which elements are present herein as to all of the defendants, including defendant Rosenberg, are: false statments including non-disclosures, knowledge of falsity including exception for fiduciary relationship, intention to induce reliance, reliance, and damage. Keeton, Prosser and Keeton on Torts, 5th Ed., pp. 728, 738 (1984).

Defendant Rosenberg concealed the 30-year retirement allowance which plaintiff with 34 years of service should have received, concealed the rules and regulations by which plaintiff should have been granted credit for prior service, concealed the errors in plaintiff's Statements one of which was the failure to place purchase money in plaintiff's Annuity, and concealed plaintiff's legal causes of action and applicable statutes of limitations.

In this action, plaintiff claims discrimination based on sex and religion since male and/or non-Christian teachers had their pensions calculated correctly as of right or by legal action. As to plaintiff, all of the defendants conspired to conceal the correct pension benefits from plaintiff. In a civil conspiracy, the essence is the damage and the averment of a conspiracy is important for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

As to the second cause of action, credit for prior service, the regulations for granting credit for plaintiff's prior service were fraudulently concealed from plaintiff and defendant Rosenberg conspired with other defendants to conceal that plaintiff should not have been required to purchase as outside service 2-1/2 years of service for which she should have been given automatic and immediate credit since it was service

in the job of entry in membership in the Retirement System. A copy of the relevant portion of these rules as printed on the forms of the Retirement System is attached hereto as "Exhibit S."

As to the third cause of action, plaintiff's financial records, defendant Rosenberg concealed from plaintiff that the purchase money should have been placed in plaintiff's Annuity Savings Fund.

As to the second and third causes of action, the arguments made above for fraud and conspiracy with respect to the first cause of action prevail also for the second and third causes of action.

As to the fourth cause of action, the deprivation of rights, defendant Rosenberg did not make response to plaintiff's claims, did not show any signs of proceeding in these matters, and would not provide plaintiff with information or direction as to the causes of action and the statutes of limitations.

As to his contractual and fiduciary duties to plaintiff, defendant Rosenberg stands in superior knowledge or expertise on pensions and the law over plaintiff and in such position owed plaintiff answers on the basis of his superior knowledge and position of trust. Defendant Rosenberg breached his contractual and fiduciary duties for all of plaintiff's causes of action.

There are nine defendants united in interest in this action. The claims and issues as to defendant Rosenberg are

intertwined with eight other defendants. The significance of the allegation of conspiracy is to charge that this actionable wrong was committed jointly by defendants so that acts of one are imputed to others because of their common purpose and intent. In this case, the purpose was to deprive plaintiff of knowledge of and receipt of her correct pension benefits.

POINT II

NONE OF THE CAUSES OF ACTION IS TIME BARRED: ALL OF THE STATUTES OF LIMITATIONS ARE IN PLACE

For the causes of action of conspiracy, fraud, discrimination, and breach of contract and fiduciary duty, the three-year, six-year, and continuing violations limitations are in place and have not expired as to any cause of action.

As to the Article 78 proceeding, it is inappropriate for the plaintiff's causes of action. The Article 78 is a procedural device for obtaining relief previously sought by writs of certiorari for review, mandamus, or prohibition. Such writs are not appropriate for the causes of action herein. In addition even if an Article 78 proceeding is available, there is no basis for believing that New York courts regard this proceeding as the exclusive means for pursuing such a claim. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), cert. denied, 102 S.Ct. 1631 (1982).

Further, as to the Article 78, "restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner. . ." Chase, Civil Litigation in New York, p. 849 (1983). In plaintiff's action, restitution for the first cause of action is upwards of $30,000.

Further, as to the Article 78, it is difficult to obtain disclosure and in plaintiff's case disclosure is vital to success on the merits. The pension plan has not been disclosed by defendants. Plaintiff's records have not been produced. And these are just two examples of the importance of disclosure in plaintiff's action.

CONCLUSIONS

Attorney for defendant Rosenberg claims that plaintiff's injuries were sustained prior to contact with defendant Rosenberg. Plaintiff had no knowledge of the causes of action prior to retirement and prior to her contact with defendant Rosenberg. The causes of action as to defendant Rosenberg are concealment of the causes of action, conspiracy, and breach of contract and fiduciary duty, all of which occurred upon contact with defendant Rosenberg and after such contact and are continuing to date.

Defendant Rosenberg's negligence in the conduct of plaintiff's case has prevented and is continuing to prevent plaintiff from obtaining her correct pension benefits.

WHEREFORE, for all of the reasons set forth herein,

and in greater detail in the complaint, this Court should deny defendant Rosenberg's motion to dismiss the complaint. Should not the motion to dismiss have been made before defendant Rosenberg served his answer (served September, 1985)?

Dated, December 11, 1985.

Respectfully submitted,

Alice Clissuras

ALICE CLISSURAS, pro se
Plaintiff in Person

TO: ATTORNEYS

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant Lewis Rosenberg

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for Insurance Department and City University Defendants

FREDERICK A. O. SCHWARZ, JR., ESQ.
Corporation Counsel of the City of New York
Attorney for City Defendants

D. Nicholas Russo, Esq.
Attorney for Defendant Professional Staff Congress/CUNY

PLAINTIFF'S EXHIBIT R, MEMORANDUM IN OPPOSITION

The City University Of New York
535 East 80 Street, New York, N.Y. 10021

MELANI v. BHE - SUBCLASS II
CLAIM DECISION

Name: CLISSURAS , ALICE

Address: 215 ADAMS ST

BROOKLYN NY 11201

Social Security #: 104-20-9440

In accordance with Section X of the Final Consent Decree in Melani v. BHE, United States District Court, Southern District of New York (73 Civ. 5434 (LPG)), your claim has been reviewed by the University. The University has decided not to contest part of your claim in this proceeding. In making this decision, the University does not admit to the validity of any claims made regarding sex discrimination.

You have been awarded the following points:

CLAIMS MADE	POINTS
Promotion or appointment to a higher title	0
Salary (7 years)	7
Total	7

The actual amount of your award will be determined after all Subclass II claims have been decided. Under the terms of the Decree, the total number of points that all claimants have been awarded shall be divided into the $1,700,000 fund to determine the dollar value of each point. Each claimant's share shall be the product of the number of points that she has been awarded multiplied by the per point dollar value.

PLAINTIFF'S EXHIBIT S, MEMORANDUM IN OPPOSITION

PRIOR SERVICE:

When you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to c for previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In o for such prior service to be credited, you must properly fill out page three of this application.

You are entitled to immediate credit for prior service as follows:

(a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retire system; or,

(b) If it was rendered during which employment you became a member of this System.

(c) Service credit that was transferred from any public retirement system in New York City or New York State.

McINTYRE, REPLY AFFIRMATION IN SUPPORT, PP. 484-487

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

- x

Index No.: 20522/85

REPLY AFFIRMATION

ANN TERESA McINTYRE, an attorney at law, duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am associated with Bergadano, Zichello & Babchik, attorneys for defendant Lewis Rosenberg, and I make this affirmation in reply to plaintiff's opposition to defendant Rosenberg's motion to dismiss the complaint for failure to state a cause of action against him.

2. Plaintiff makes various claims against all defendants, including the alleged inaccurate calculation of her pension benefit and failure to counsel her prior to her retirement (on September 1, 1982) concerning certain pension options. Neither of those claims can be asserted against defendant Rosenberg, who did not meet the plaintiff until February, 1983, and had no control over her pension calculation or counselling.

3. Defendant Rosenberg's motion to dismiss is based on plaintiff's failure to state a cause of action for malpractice against him. A review of plaintiff's complaint (Exhibit A to the moving papers) shows that plaintiff's allegations against defendant Rosenberg consist of the following: plaintiff's Union retained defendant Rosenberg's fir to represent her; she met defendant Rosenberg on February 15, 1983; she alleges that defendant Rosenberg took no steps; had n file; did not discuss her case or her legal rights with her; withheld information as to her pension benefits or legal rights, and terminated representation of her without direction by lette dated April 5, 1983.

4. Plaintiff has failed to state a cause of action against defendant Rosenberg because there is no claim made, nor can plaintiff make such a claim, that defendant Rosenberg's alleged conduct caused or contributed to her alleged injury.

5. Co-defendants City of New York Teachers Retiremen System for the City of New York, Teachers Retirement Board for the City of New York, and the Depar.ment of Insurance, moved to dismiss the complaint as barred by the four month statute of limitations applicable to Article 78 proceedings, among other reasons. By decision dated November 19, 1985, the Honorable James H. Shaw, Jr. granted those motions, holding:

> Plaintiff's lawsuits were commenced some three years subsequent to her retirement and are subject to a four month Statute of Limitiations. Both causes of action are time barred. Plaintiff's complaint against each defendant is dismissed.

A copy of the decision is annexed as Exhibit A.

6. It is now clear from Justice Shaw's decision that the claims for which defendant Rosenberg was retained to make concerning her pension were governed by the four month limitations period. Even assuming it began to run on various dates alleged in the complaint, defendant Rosenberg's alleged lack of action did not preclude her from maintaining an action:

a) Plaintiff retired September 1, 1982. If that is the date the limitations period would begin, it would have expired January 1, 1983, before defendant Rosenberg ever met the plaintiff (February 15, 1983).

b) First pension check dated December 31, 1982, received by plaintiff January 2, 1983. The period would have expired either April 31, 1983 or May 2, 1983, after defendant Rosenberg notified her he would not continue as her attorney (April 5, 1983).

c) Amount of pension approved January 20, 1983 by the Teachers Retirement Board. The period would have expired May 20, 1983, after defendant Rosenberg notified plaintiff he would no longer continue as her attorney (April 5, 1983).

7. In fact it is clear from the complaint itself that defendant Rosenberg warned plaintiff a short Statute of Limitations may be applicable. In defendant's Rosenberg's letters to plaintiff of February ', 1983 and April 5, 1983 he expressed this concern. Copies of those letters are annexed as Exhibit B.

8. Therefore, it is clear that nothing defendant Rosenberg did or did not do caused or contributed to plaintiff's alleged injury, and she has failed to state a cause of action against defendant Rosenberg.

WHEREFORE, defendant Lewis Rosenberg prays that an order be granted dismissing the complaint as to him, and that this Court grant such other, further and different relief which as to this Court seems just and proper.

Dated: New York, NY
December 13, 1985

Ann Teresa McIntyre

Ann Teresa McIntyre

McINTYRE, EXHIBIT A, REPLY AFFIRMATION IN SUPPORT

FORM 81 B

MEMORANDUM

SUPREME COURT COUNTY

ALICE CLISURRASM
Plaintiff,

vs.

CITY OF NEW YORK, et al.,
Defendants,

By James H. Shaw, Jr. J. S. C.

Dated November 19, 1985

Index No. 20522/85

RECEIVED
NOV 26 19
B. Z. B.

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsquent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.,

Settle Judgment

James H. Shaw Jr.
J.S.C.

EXHIBIT A

McINTYRE, EXHIBIT B, REPLY AFFIRMATION IN SUPPORT, PP. 489-490

ABRAHAM L. SHAPIRO
RUBEY FOX
HERBERT SHIFF
STEWART L. REILLY
LEWIS ROSENBERG*
OSWALD RICHMAN**
THEODORE T. WEISER**
HAROLD D. KOZUPSKY
MORRIS S. WOLIN
RAYMOND B. FERRARO
LAWRENCE S. SIMON
RICHARD J. ROTHMAN
ERWIN B. NEWMAN
MAX GOLDBERG
DOROTHY S. VIVAS
DAVID E. DREXLER
RICHARD GROSS
STANLEY M. ALBERT***
BRIAN BROWN
BETH SHAPIRO
ROY J. KARLIN
BARRY WASSON

SHAPIRO, SHIFF, REILLY, ROSENBERG & FOX
225 BROADWAY
NEW YORK, N.Y. 10007

AREA CODE 212
267-9020

LESTER HOLTZMAN
Counsel

*ADMITTED TO MASS. BAR
**ADMITTED TO D.C. BAR
***ADMITTED TO FLORIDA BAR

February 4, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. s-10465

Dear Professor Clissuras:

I assume by the time that this letter reaches you, you will have been advised by Beryl Weinberg of Professional Staff Congress/CUNY that we are to act as your attorneys in connection with the dispute you have with the New York City Teachers Retirement System.

Because that body is a governmental agency, there are frequently controlling laws and regulations which require action to be instituted very promptly. I accordingly request that you contact me at your earliest possible convenience so as to preclude the expiration of any period of limitation concerning rights you might have.

Thank you for your cooperation.

Very truly yours,

Lewis Rosenberg/gld

LEWIS ROSENBERG

LR/gld

[redacted] B

ABRAHAM L. SHAPIRO
SIDNEY POR
HERBERT SHIFF
STEWART L. REILLY
LEWIS ROSENBERG*
GERALD RICHMAN**
THEODORE T. WEISER**
HAROLD M. SUZUPSKY
MINNIE E. WOLIN
RAYMOND S. FERRARO
LAWRENCE S. SINOR
RICHARD J. ROTHMAN
ERWIN M. NEWMAN
NEAL GOLDBERG
DOROTHY S. VIVAS
DAVID E. UNGERLEIR
RICHARD GROSS
STANLEY H. ALBERT***
BRIAN BROWN
BETH SHAPIRO
ROY J. HARLIP
BARRY WARNOK

SHAPIRO, SHIFF, REILLY, ROSENBERG & WOLIN
225 BROADWAY
NEW YORK, N.Y. 10007

AREA CODE 212
267-9024
LESTER HOLTZMAN
COUNSEL

*ADMITTED TO MASS. BAR
**ADMITTED TO D.C. BAR
***ADMITTED TO FLORIDA BAR

April 5, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. S-10465

Dear Professor Clissuras:

I have been unsuccessful in attempting to reach you by telephone and, accordingly, am writing you this letter.

From my conversations with Richard Rothman, it is evident that you have a complete lack of confidence in the actuary, who we believe could be helpful in setting forth the facts necessary to analyze your claims for retirement benefits under the Applicable Retirement System. As you know from my advice, it is impossible to proceed in your matter without an expert opinion.

Richard Rothman also tells me that you expressed a lack of confidence in our ability to proceed with your case.

I must reluctantly conclude that it is impossible for us to continue as your attorneys. I, therefore, suggest you make other arrangements for representation in this matter. Please also be referred to our earlier advice concerning a short Statute of Limitations which may be applicable.

Very truly yours,

LEWIS ROSENBERG

LR/gld
CERTIFIED MAIL:
RETURN RECEIPT REQUESTED
cc: Beryl Weinberg

B

CITY UNIVERSITY DEFENDANTS. NOTICE OF MOTION TO DISMISS. PP. 491-492

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

ALICE CLISSUPAS, :

Plaintiff, : Index No. 20522/8

-against- : NOTICE OF MOTION

CITY OF NEW YORK, et al., :

Defendants. :

----------X

PLEASE TAKE NOTICE that, upon the affidavit of Sue Barnett Bohringer, together with the exhibits attached thereto and the accompanying memorandum of law, defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (collectively the "City University defendants") will move this Court at a Special Term, Part I, at the New York Supreme Court, Kings County, Brooklyn, New York at 9:30 a.m. on the 20th day of December, 1985, or as soon thereafter as counsel may be heard, for an order pursuant to CPLR 3211(a)(5) and 3211(a)(7) dismissing the complaint in this action on the grounds that the action is barred by applicable statutes of limitations and that the complaint fails to state a cause of action.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), as amended, answering affidavits must be served upon the undersigned no later than seven days prior to the return date of this motion.

Dated: New York, New York
November 26, 1985

Yours, etc.,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for the City
University defendants and
defendant New York State
Department of Insurance
Two World Trade Center
New York, New York 10047
(212) 488-5744

TO: ALICE CLISSUPAS
215 Adams Street
Brooklyn, New York 11201
Plaintiff Pro Se

FREDERICK A.O. SCHWARTZ, JR.
Corporation Counsel of the City
of New York
100 Church Street, Room 6E6
New York, New York 10007
Attorney for Defendants City of
New York, Teachers' Retirement
Board of the City of New York
and Teachers' Retirement System
of the City of New York

BERGADANO ZICHELLO & BABCHIK
420 Lexington Avenue
New York, New York 10170
Attorneys for Defendant Rosenberg

D. NICHOLAS RUSSO, ESQ.
25 West 43rd St. - 5th Floor
New York, New York 10036
Attorney for Defendant
Professional Staff Congress/CUNY

BOHRINGER, AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS. PP. 493-498

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.

Index No. 20522/85

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

SUE BARNETT BOHRINGER, being duly sworn, deposes and says:

1. I am admitted to practice before the Courts of this State and am an Assistant Attorney General in the office of ROBERT ABRAMS, Attorney General of the State of New York, attorney for defendants Board of Higher Education of the City of New York, City University of New York, New York City Technical College (collectively the "City University defendants") and the Department of Insurance of the State of New York (the "Insurance Department"). I make this affidavit in support of the City University defendants' motion pursuant to CPLR 3211(a)(5) and 3211(a)(7) to dismiss the complaint on the grounds that the action is barred by applicable statutes of limitations and that the complaint fails to state a cause of action. My knowledge is based upon the files maintained by the City University and by the Insurance Department.

2. In this action, plaintiff, a former teacher at New York City Technical College (the "College"), who retired September 1, 1982, complains at considerable length that the Teachers' Retirement System of the City of New York (the "Retirement System") has incorrectly calculated the pension benefit to which she is entitled. She further complains that various City agencies, the City University defendants, her union and the Department failed to counsel her prior to her retirement about certain options and that, as a result, she made choices she now regrets. A copy of her complaint in this action is attached as Exhibit A.

3. Plaintiff filed a virtually identical complaint in the United States District Court for the Eastern District of New York. In that action, she alleged that defendants' alleged failures to counsel her discriminated against her on the basis of her sex and religion, in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-5. A copy of that complaint is attached as Exhibit B. On November 14, 1985, Judge Jack B. Weinstein dismissed that complaint as to all defendants, ruling inter alia, that plaintiff's Title VII claims were time barred, that there had been no constitutional violation and that plaintiff's remedy for challenging the calculation of her benefits lies in an Article 78 proceeding in New York Supreme Court.

4. The City of New York, the Teachers' Retirement Board of the City of New York, the Teachers' Retirement System of the City of New York (collectiely the "City defendants")

and the Insurance Department moved to dismiss the complaint in this action in motions heard by Justice James H. Shaw, Jr. on November 13, 1985. In a memorandum dated November 19, 1985, which I received today, Justice Shaw held that plaintiffs' claims against the City defendants and the Insurance Department are "subject to a four month Statute of Limitations" and are "time barred." Defendant Rosenberg has also moved to dismiss the complaint. That motion is presently returnable on December 16, 1985.

5. Plaintiff's contacts with the City University defendants regarding the various matters raised in her complaint have been countless. I will recite only the most significant ones. By letter dated February 23, 1983, Robert Ziskind, the University Pension and Welfare Benefits Officer, informed Miss Clissuras about the method used to calculate her benefits. A copy of that letter is attached as Exhibit C. In that letter Mr. Ziskind pointed out that he and Miss Clissuras "disagree on at least two major points very crucial to the calculation." Mr. Ziskind then proceeded to explain his position. Thus Miss Clissuras knew shortly after February 23, 1983 that the University disagreed with her arguments.

6. By letter dated September 22, 1983, a copy of which is attached as Exhibit D, Judith R. Bronstein, Acting Dean for Professional Personnel at the College, explained

calculation of retirement leave (see Ex. A, ¶ 46(B)) and the facts that payroll files prior to 1979 had been destroyed by flooding and that duplication of existing payroll records would be inordinately time consuming and costly.

7. By letter dated January 12, 1984, a copy of which is attached as Exhibit E, Ms. Bronstein once again responded to plaintiff's request for information. In that letter, Ms. Bronstein stated: "You appear to be primarily concerned with whether your current retirement allowance is correct. Retirement benefits are based in the main on years of service and final salary. These figures have been given to you." In this regard, Ms. Bronstein continued: "Clearly your annual salary in the intervening years of your service at the college is not crucial to your retirement benefit. However, you have received W2 forms each year as well as annual statements from your retirement system. It was your responsibility to check these at the time, report any errors and see to it that corrections were made." Ms. Bronstein also responded to plaintiff's requests for information concerning the retirement plan for the years 1951-1953 and maximum retirement leave. Yet Miss Clissuras continues to maintain that the City University defendants withheld information from her (Ex. A., e.g., ¶¶ 20(F), 20(G), 32(D)).

8. Plaintiff's claim that the City University defendants wrongfully discriminated against her on the basis of sex is barred by the consent decree in Lilia Melani v. Board of Higher Education, No. 73 Civ. 5434 (LPG) (May 15, 1984), a copy of which is attached as Exhibit F. That decree resolved all claims against the Board of Higher Education by plaintiffs and class members that the Board had discriminated against them on the basis of sex with respect to retirement benefits in violation of Title VII, Section 1983 or any other federal, state or local law or regulation. Plaintiff is a member of Subclass II, which consists of women on the City University's full-time instructional staff who were severed from employment during the period December 21, 1970 through May 15, 1984. In accordance with that decree, by letter dated July 17, 1985, a copy of which is attached as Exhibit G, the University notified plaintiff that it was not contesting certain portions of her claim and that she had been awarded seven additional salary points.

9. The City University defendants were effectively served with the summons and complaint in this action on October 30, 1985.

10. As shown in the accompanying memorandum of law, any claims plaintiff may have had against the City University defendants are barred by the applicable statutes of limitations. Her claim that she was discriminated against on the basis of sex is barred by the consent decree in Melani.

WHEREFORE, I respectfully request that this Court dismiss the complaint in this action as to the City University defendants.

Sue Barnett Bohringer
SUE BARNETT BOHRINGER

Sworn to before me this
day of November, 19^5

Assistant Attorney General
of the State of New York

BOHRINGER, AFFIDAVIT OF CITY UNIVERSITY DEFENDANTS IN SUPPORT OF MOTION TO DISMISS COMPLAINT

EXHIBIT A: SUPREME COURT SUMMONS AND COMPLAINT

(SUMMONS AND COMPLAINT HAVE BEEN OMITTED HERE SINCE THEY APPEAR ON pp. 67-101, HEREIN.)

BOHRINGER, AFFIDAVIT OF CITY UNIVERSITY DEFENDANTS IN SUPPORT OF MOTION TO DISMISS COMPLAINT

EXHIBIT B: UNITED STATES DISTRICT COURT SUMMONS AND COMPLAINT

(SUMMONS AND COMPLAINT HAVE BEEN OMITTED HERE SINCE THEY APPEAR ON pp. 163-197, HEREIN.)

Office of the Vice Chancellor for Faculty and Staff Relations

535 East 80 Street, New York, N.Y. 10021

212 794-5341

BOHRINGER, EXHIBIT C,
AFFIDAVIT TO DISMISS, PP. 501-502

February 23, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:

I will attempt to answer your request for information in the light of what I understand to be the actual situation rather than as you presented it to me in your letter.

We disagree on at least two major points both very crucial to the calculation:

1. Your years of credited service, as noted by the Teachers' Retirement System, are not all credited as City service. The years include a certain amount of purchased service. The purchased service counts as 1.2% per year, not as 2.5% years and not as 1.7% years.

So, we disagree on what 34 years of service represents as the pension portion. You maintain that it should count as 72.8%. Obviously, TRS counted it as a little less. If you purchased 4 years of service, then the pension would calculate as follows:

4 years x 1.2%	=	4.80%
20 years x 2.5%	=	50.00% *
10 years x 1.7%	=	17.00%
		71.80%

* 50% provided you have the minimum accumulation in your Annuity Savings Fund.

2. You indicated to me in our discussion that you had taken out a substantial loan prior to retirement as well as having previously taken out excess contributions. Upon retirement, the loan was, in effect, cancelled and your ASF account reduced accordingly, thereby causing a deficit. The deficit reduces the 50% pension figure by the actuarial equivalent of the deficit. For a female, age 56, the actuarial equivalent is about $72. a year per $1,000. Thus, a

Professor Alice Clissuras: February 23, 1983

$10,000 deficit would reduce the 50% by $720 a year; a $15,000 deficit reduces it by $1,080 a year. Therefore, a 71.8% (or a 72.8%) pension would be further reduced by the appropriate dollar deficit. A $1,080 deficit-caused reduction would then make the pension 69+%.

Based on the above areas of disagreement and the information contained in your letter, it would not be possible for me to provide any calculation for you unless I am provided with the following data:

Years of Purchased Service
Years of City Service

Amount of Excess Withdrawn
Amount of Outstanding Loan

I look forward to hearing from you if you wish to pursue this matter further, but I really believe that our areas of disagreement would preclude any fruitful exchange.

Very truly yours,

Robert Ziskind
University Pension and
Welfare Benefits Officer

RZ:bt

cc: Ms. Beryl Weinberg, PSC
Ms. Claire Moses, TPS
Mr. Jonathan Schwartz, TRS

NEW YORK CITY TECHNICAL COLLEGE
OF THE CITY UNIVERSITY OF NEW YORK
300 Jay Street, Brooklyn, N.Y. 11201 643-4900

BOHRINGER, EXHIBIT D, AFFIDAVIT TO DISMISS, PP. 503-508

September 22, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Dear Professor ~~Glis~~suras:

President Schwerin has asked me to respond to your most recent letter which deta several problems relating to payroll records, pension credit for the period 1948-1953, and the use of accrued temporary disability leave in determining travia lea

In our phone conversation I asked that you meet with me to discuss these issues s that I could either provide you with the information you require or at a minimu direct you to the appropriate individual or organization where such information might be obtained. Since you did not feel such a meeting would be productive, I attempt to respond to the issues raised in your letter.

First, retirement leave (Travia leave) is based on one half of an imdividual's accumulated temporary disability leave. Whether this figure is 160 days or 180 d the maximum leave can be only one semester. I am enclosing the appropriate secti the BHE Bylaws for your information. The policy you note requiring payment for e days refers to the UFT Contract for Board of Education employees and not to the rules and regulations of the Board of Trustees of CUNY or the PSC Contract. The Personnel Office also informs me that you were sent copies of your attendance re dating back to 1950 and I am enclosing a copy of a memo sent to you on December 1980 explaining why your maximum sick leave accrual was 160 days.

Second, I asked payroll to search their files to see which payroll records are readily available for duplication. They inform me that they have information fr 1979 to the present. All prior records were placed in a storage facility and due flood in that location many were destroyed. We are attempting to determine the e extent of the loss but the process will take several months. I further requested payroll to duplicate a sample of their records. As you can see from the enclosed "Pay Roll Sheet" these forms are very difficult if not impossible to read. In addition, these sheets contain many individuals names and salaries. In order to their privacy each sheet has to have all other information blocked out before it can be copied. The cost of such a process would be approximately $10 per page. understand that the City Payroll Department keeps records for approximately seven years with older files being sent to the city archives. Contacting them may save

you this cost as well as give you access to all the records you are requesting. They may be contacted by calling the New York City Comptroller's Office at 566-1141.

Lastly, any problems you are having in correcting your pension may be discussed with Mr. Robert Ziskind (794-5341) since he is the most knowledgeable individual in the University on such matters.

If you wish to discuss any of the above, please call me.

Sincerely,

Judith R. Bronstein
Acting Dean for
Professional Personnel

sb

Enclosures

cc: President Schwerin
Mr. Ogden

NEW YORK CITY COMMUNITY COLLEGE

INTER-OFFICE MEMORANDUM

DATE December 2, 1980

TO Professor Alice Clissuras

FROM Peggy A. Ogden, Personnel Director

SUBJECT Sick Leave Balance

Back in September 1977 we advised you that an interpretation of the PSC cont required that we use the sick leave record of September 1, 1969 to establish maximum earning allowance for sick leave.

In September 1969 you had accrued 156 days of sick leave which thereby per you to earn a maximum of 160 days.

You have been informed of the 160 maximum each September since 1977.

Hope this explanation is helpful.

PAO:sr

INTER-OFFICE MEMORANDUM NYC COMMUNITY COLLEGE

TO: Peggy Ogden, Personnel Dr.	DATE: November 21, 1980
FROM: Alice Clissuras, Sec. Sc.	SUBJECT: Sick Leave Balance

Your memo on my sick leave balance incorrectly stated the balance as 160 days. I have 180 days of sick leave as indicated by my records and the many memos I have received from Personnel in the past.

If you have dates of absence, which indicate otherwise, I would be happy to review them against my records.

cc: Personnel

AUG 1977

BHE. By LAWS

Section 13.3 RETIREMENT LEAVES. Members of the New York City teachers' retirement system and members of the permanent instructional staff and lecturers (full-time) with administrative certificates of continuous employment, persons with titles in the higher education officer series, and persons with titles in the business manager series who are members of any other retirement system who announce their bona fide intention to retire shall be granted a retirement leave of absence with full pay consisting of one-half of their accumulated unused temporary disability leave up to a maximum of one semester, or the equivalent number of school days. Terms and conditions relating to such retirement leave shall be governed by section 3107 of the state education law.

Section 13.4 ANNUAL LEAVE. a. The period of annual leave for teaching members of the faculty who have taught for a full year (September - June) in the titles of professor, associate professor, assistant professor, instructor, *lecturer (full-time) and lecturer (part-time) shall be from the day subsequent to the June commencement at each college until the first of September following such commencement.

b. The period of annual leave for college laboratory technicians, research assistants, higher education officer title series, registrar title series and business manager title series shall be twenty-three work days per year. If the appointment is for less than a year, the vacation period shall be prorated accordingly.

All employees in any of the above titles who were employed prior to September 1, 1969 shall suffer no loss or diminution of prior vacation privileges.

c. The period of annual leave for members of the instructional staff who are employed in the libraries shall be thirty days.

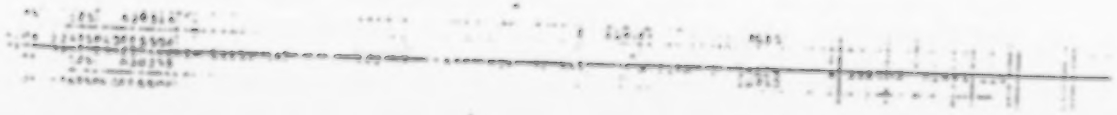
Section 13.5 LEAVES FOR SPECIAL PURPOSES. a. Special leaves for personal emergencies of not more than ten working days may be granted with pay by the president at his/her discretion.

b. On the recommendation of the relevant departmental committee concerned with appointments, the relevant college committee, and the president, the board may grant to members of the instructional staff leaves of absence for special purposes such as study, writing, research, the carrying out of a creative project or public service of reasonable duration. Such leaves shall be without pay.

c. Special leaves for the purpose of caring for a newborn child shall be granted to a member of the instructional staff upon notification to the president and application for such leave, provided the applicant has legal responsibility for the care and/or support of said child. Such leave shall, insofar as is practicable, begin on February 1 or September 1, unless the date of the birth of the child is such as to render these times inappropriate. The duration of the leave shall be one full semester. In exceptional cases, on request of applicant, the president may terminate such leave during the college term, provided there is an appropriate opening in which the applicant's service may be utilized. An extension of such special leave shall be permitted on request for a period not in excess of one year from the end of the original leave. No further extensions shall be permitted. Special leaves for the purpose of caring for a newborn child shall

*Until 7/1/71, these provisions shall not apply to lecturers (full-time) not paid against an annual salaried budget line or to lecturers (part-time).

PAY ROLL SHEET



NEW YORK CITY TECHNICAL COLLEGE
OF THE CITY UNIVERSITY OF NEW YORK
300 Jay Street, Brooklyn, N.Y. 11201 643-4900

BOHRINGER. EXHIBIT E. AFFIDAVIT TO DISMISS. PP. 509-510

January 12, 1984

Professor Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Dear Professor Clissuras:

I have reviewed the correspondence between us during the last several months and will in this letter attempt to respond to your concerns stated in your last letter, dated November 30, 1983. Please understand we have not withheld any information regarding your service at the college and would have no conceivable purpose to do so.

You appear to be primarily concerned with whether your current retirement allowance is correct. Retirement benefits are based in the main on years of service and final salary. Those figures have been given to you. Clearly your annual salary in the intervening years of your service at the college is not crucial to your retirement benefit. However, you have received W2 forms each year as well as annual statements from your retirement system. It was your responsibility to check these at the time, report any errors, and see to it that corrections were made. For example, if your contributions to the retirement system, as set forth in your monthly or bimonthly salary stubs were not correctly reflected in your annual annuity statement, you had an opportunity at the time to clarify and correct any errors.

As we have informed you the College's old payroll sheets have been rendered unavailable by flood damage. The college does have sheets from 1979 to the present. Since they reproduce illegibly, we can arrange for you to see them at a mutually convenient time; but we cannot give you or show you that which we do not have.

We believe the retirement system covering the College of Applied Arts and Sciences during the years 1951-1953, as the College was named during that time, was the New York State Employees Retirement System, (ERS) except for those persons who may have had prior membership in the TRS. We suggest a check with ERS might confirm your membership at that time and a check with TRS should reveal any transfer of funds to it from ERS.

With respect to your retirement or terminal leave, also known as Travis leave, we have explained the basis for computation of such leave in letters to you dated December 2, 1980 from Peg Ogden, February 25, 1983 from Frieda Berger, and September 22, 1983 from me.

The Board of Higher Education bylaws provide in pertinent part:

> "Sec. 13.3 . . . . members of the permanent instructional staff . . . . who announce their bona fide intention to retire shall be granted a retirement leave of absence with full pay consisting of one half of their accumulated unused temporary disability leave (sick leave) up to a maximum of one semester or the equivalent number of school days."

Section 3107 of the State Education Law provides for this in the exact terms as the bylaw and is applicable alike to everyone eligible. Section 3107 further provides that persons may only be granted sick leave due to personal illness of twenty days for each year cumulative to a maximum of 160 days. (See annexed copy of the statute).

Therefore, regardless of the number of days you had accumulated (i.e. 180 days or 160 days) your maximum paid terminal leave prior to actual retirement may not exceed one semester by law. You did have the maximum, a full semester's retirement leave from February 1, 1982 through June 1982.

Finally, with regard to your social security benefits, that office has a record and will furnish it upon your written request. If you did not hold on to your pay stubs as a check, that is your responsibility especially when our records are no longer available.

Sincerely,

Judith R. Bronstein
Acting Dean for
Professional Personnel

sb

Enclosure

bcc: Peg Ogden
Paula Levitt

BOHRINGER, EXHIBIT F, AFFIDAVIT TO DISMISS, PP. 511-514

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

LILIA MELANI, *et al.*,

Plaintiffs,

—against—

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK,

Defendant.

X

73 Civ. 5434 (LPG)

NOTICE OF PRELIMINARY APPROVAL OF CONSENT DECREE AND NOTICE OF HEARING ON APPROVAL OF THE DECREE

TO: ALL WOMEN NOW EMPLOYED AS MEMBERS OF THE INSTRUCTIONAL STAFF AT THE CITY UNIVERSITY OF NEW YORK, OR WHO AT ANY TIME SINCE DECEMBER 21, 1970 WERE EMPLOYED OR APPLIED FOR EMPLOYMENT AS MEMBERS OF THE INSTRUCTIONAL STAFF AT THE CITY UNIVERSITY OF NEW YORK.

Re: Settlement of Sex Discrimination Class Action Against CUNY

You are hereby advised that the United States District Court (Hon. Lee P. Gagliardi) on May 15, 1984 preliminarily approved a proposed Consent Decree in settlement of the above action. A copy of the Consent Decree is enclosed.

The Court has scheduled a hearing for July 12, 1984, to consider whether to grant final approval to the Decree, and to consider the objections of any class member to the Decree.

Please read the enclosed Decree carefully. The Decree, if finally approved by the Court, will be binding on all class members as defined therein.

If you do not object to the proposed Decree, you need take no further action at this time. Upon final approval of the Decree, you will receive written notice of the procedures you must follow to apply for and receive any payment under the settlement for which you are eligible.

If you do wish to object, you must file your objections in writing (together with copies of any and all other papers you may wish to present in support of your objection) by mailing or delivering such papers to the Clerk, United States District Court, Foley Square, New York, New York 10007 with the following notation on the envelope (CUNY-Title VII). A copy of any objection and supporting papers must also be delivered or mailed at the same time to plaintiffs' counsel Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, New York 10036. All such objections must be postmarked or filed in person not later than July 2, 1984. Any class member may also appear either in person or through an attorney of her choice at the settlement hearing to be held at 10:00 a.m. on July 12, 1984, before the Honorable Lee P. Gagliardi, in the United States District Court, Southern District of New York, Foley Square, New York, New York 10007.

The hearing on July 12, 1984 or any adjournment thereof, may be adjourned without further notice, except as is given by the Court at such hearing or any adjournment thereof.

Any class member who fails to object in the manner specified above shall not be entitled to contest the final approval of the proposed settlement and the judgment entered thereon, and shall be deemed to have waived such objection and shall be foreclosed from raising any objections she might have.

The documents which set forth the agreement of the proposed resolution, disposition and termination of these proceedings, as well as the pleadings and other papers in this action, are on file with the Clerk of the Court. These documents may be inspected during regular business hours at the Office of the Clerk, United States District Court, Southern District of New York, Foley Square, New York, New York 10007.

For further information concerning the settlement, you may write to plaintiffs' counsel, Judith P. Vladeck, Esq. or Joseph J. Garcia, Esq. of the law firm of Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, New York 10036. Inquiries should *not* be directed to the Court.

Dated: New York, New York
May 15, 1984

S/

Raymond F. Burghardt
Clerk, United States District Court
for the Southern Distric of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LILIA MELANI, *et al.*,

Plaintiffs,

—against—

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK,

Defendant.

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73 Civ. 5434 (LPG)

CONSENT DECREE

I.
BACKGROUND

Plaintiffs commenced this action on December 20, 1973, on behalf of themselves and all women similarly situated, against the Board of Higher Education of the City of New York ("University").* Plaintiffs sought declaratory and injunctive relief and damages to redress the alleged violations and deprivation of rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII") and 42 U.S.C. §1983 ("Section 1983").

Plaintiffs alleged in their Complaint that the defendant had maintained certain employment policies and practices which discriminated against the named plaintiffs and members of the class because of their sex. Defendant in its answer denied all material claims. Plaintiffs sought class action certification and, by an Opinion and Order dated June 23, 1976, the Court certified a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class was defined as all women now employed by the Board as members of the instructional staff at The City University of New York ("University") or who at any time since 1968** have been so employed or have sought such employment.

In May, 1977 plaintiffs moved for a preliminary injunction seeking retention on the University's payroll of those Higher Education Officers (HEOs) and teaching faculty members of the plaintiff class who had been non-reappointed by defendant, allegedly as a result of sex discrimination, and who were scheduled to go off payroll in the summer of 1977. Plaintiffs' application was denied in its entirety.

An initial trial limited to the claim of salary discrimination was held before the Court during June of 1980. The Court issued an Opinion and Order on March 17, 1983, finding that defendant discriminated against plaintiffs in the payment of salaries in violation of Title VII. Defendant did not agree with the findings on salary discrimination, and maintained its right to appeal.

Thereafter, in an effort to reach a settlement of this action, attorneys for the parties engaged in extensive discussions. These discussions have resulted in this Decree, which, subject to the approval of the Court, settles this action in the manner and upon the terms set forth below.

II.
JURISDICTION

This Court has jurisdiction of the subject matter of this action and the parties hereto. The Complaint states claims which, if proved, would authorize the Court to grant relief pursuant to Title VII and Section 1983.

The Court shall retain jurisdiction to enforce and implement this Decree.

III.
NON-ADMISSION AND NON-DETERMINATION

This Decree does not and shall not be deemed to constitute any admission by the defendant as to the validity or accuracy of any of the allegations, assertions, or claims made herein by plaintiffs. No findings of any kind have been issued by the Court concerning the merit or lack of merit of any of the allegations made by plaintiffs herein, except for the Memorandum Decision dated July 27, 1977 and the Opinion and Order of March 17, 1983 described above. Although the defendant does not agree with the findings of the Court in the said Opinion and Order of March 17, 1983, defendant has agreed to settle the action and waive any right to appeal.

This Decree, being entered with the consent of the defendant, shall not constitute an adjudication or finding on the merits of the case, and shall in no manner be construed as an admission by the defendant of any violation of Title VII, Section 1983, or any other similar Act, rule, or regulation. Rather, it is the intention of the parties to resolve this action and all issues raised by the Complaint without the time and expense of additional contested litigation.

IV.
EFFECT OF DECREE

A. This Decree resolves in full all claims against defendant by the named plaintiffs and class members involving alleged discrimination based on sex in violation of Title VII, Section 1983 or any other federal, state or local law or regulation, with respect to all terms and conditions of employment. This Decree also resolves in full any claim for damages, back pay, benefits, injunctive, declaratory or any other relief for alleged unlawful discrimination, past and present, up to and including the effective date of this Decree.

B. By entering into this Decree, the named plaintiffs and each member of the class as defined herein, hereby waive any and all rights to pursue, initiate, prosecute or commence any action, or proceeding before any court, administrative agency or other tribunal, or to file any complaint or charge of employment discrimination with regard to acts of commission or omission by the defendant respecting such class members or with respect to the status of such class members regarding position or compensation, or any other term or condition of employment prior to or as of the effective date of the Decree.

C. However, any class member who is, as of May 15, 1984, prosecuting or pursuing such matters in any court, administrative agency, or grievance and/or arbitration proceeding, and who elects to continue to do so, shall not share in any monetary or other benefits provided by this Decree.

V.
DURATION OF DECREE

This Decree shall become effective upon the tenth day following the day on which an order approving this Consent Decree becomes final beyond all possibility of appeal (hereinafter "the effective date"), and with the exception of Section IV, shall remain in effect until three years after the effective date (hereinafter "expiration date"). Section IV shall remain permanently in effect. If the District Court approves this Decree, and if there is an appeal by intervenors or objectors from such decision, the defendant will join the plaintiffs in defense of the Decree.

VI.
TERMS OF THE DECREE

1. The defendant is enjoined from discriminating against women on the basis of sex with respect to the terms and conditions of employment, including, without limitation, recruitment, hiring, assignment to rank, promotion, salary, reappointment, the granting of tenure retrenchment, fringe benefits and working conditions.

2. Each college and unit of CUNY will continue to be responsible for the development and implementation of its own Affirmative Action Program predicated on local needs and characteristics, and the requirements of law and University policies. Such affirmative action programs will be published and available to all employees at each college or unit. The University will continue its policy of not discriminating against women on the basis of sex with respect to the terms and conditions of employment, including recruitment, hiring, assignment to rank, promotion, salary, retrenchment, reappointment, the granting of tenure, fringe benefits, and working conditions.

3. The Chancellor will establish a University Affirmative Action Committee ("UAAC") of no more than 21 members with University-wide representation to provide policy and programmatic direction for the University's Affirmative Action Program. During the term of this Decree, at least one member of the Committee shall be designated from a list of at least 10 members of the University's full-time instructional staff provided to the Chancellor by plaintiffs, and at least one member shall be a certificated lecturer. Included on the Committee will be the University Affirmative Action Director, who will serve as liaison with the college program coordinators.

4. The Committee will establish the job requirements for college program coordinators, which shall include relevant training, knowledge and/or affirmative action experience. College program coordinators shall not also serve as the President's Labor Designee or Personnel Officer or report thereto. The college program coordinator shall be appointed by the president of the college and shall report directly to him or her. The job performance of college program coordinators will be subject to review and evaluation by UAAC. The Committee will review the programs and the implementation of the programs of the University and of the individual colleges and units, will receive comments thereon, and will recommend appropriate policies and actions based on such review to the Chancellor.

5. The Chancellor, in consultation with UAAC, shall establish procedures for data collection from all CUNY colleges and units. Such data shall be by college-wide, department, or other appropriate grouping, and shall be available for the purpose of assisting in the evaluation of the status of women at all levels of the instructional staff.

6(a). The University reaffirms its commitment to attaining an instructional staff based on the full utilization of qualified women, while at the same time continuing to hire and promote the best qualified candidates. The University agrees to continue to conduct such utilization analyses and establish such goals and timetables for the employment of women as are required by federal law and regulations. The purpose of the establishment and use of the goals is to insure that affirmative action obligations are met. Goals are not intended, and will not be used, to discriminate against any applicant or employee because of sex, and are not intended to be quotas. The parties shall meet semi-annually for three years to discuss the goals and timetables, and plaintiffs shall have the right to suggest for defendant's consideration different goals and timetables. The University shall provide to plaintiffs' counsel, annually, reports of its progress in meeting its goals and timetables. If the parties are not able to agree on goals and timetables, the par-

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*The City University of New York is the successor legal entity to the Board of Higher Education of the City of New York.

**By order of the Court dated May 15, 1984, this date was amended to December 21, 1970 in accordance with applicable law.

ties shall consult with the Special Master who shall have the authority to make recommendations.

In the event defendant's obligation under federal law is modified during the life of this Decree, the parties will attempt to agree upon goals and timetables; if they fail to agree, they shall consult with the Special Master who shall have the authority to make recommendations.

6(b). The University shall cause each academic unit or appropriate grouping (affirmative action unit) in which hiring decisions are made to set goals and timetables for the hiring of female faculty, periodically, but not less frequently than every year, in a manner consistent with federal regulation. If goals and timetables are not met by an academic unit or other appropriate grouping, such unit or other grouping shall supply a written analysis of why such goals have not been met. The analysis shall be provided to UAAC, which shall provide a copy to plaintiffs' counsel.

7. The University will continue its practice pursuant to the University Affirmative Action Policy and federal and state laws of not retaliating against any named plaintiff or any other person on account of his or her participation in this action and such participation shall continue to have no adverse effect upon any person's reappointment, promotional opportunities, salary, letters of recommendation, personnel record, or committee assignments, or any other condition of employment.

8. The University encourages the participation of full-time members of the instructional staff in faculty elections, governance bodies and committees. The University will provide at each college a statement to all full-time members of the instructional staff of their right to vote for members of and to serve on governance bodies and committees, as well as a description of the procedures for amending each college's governance plan.

A copy of proposed amendments to college governance plans affecting the voting rights of full-time instructional staff members shall be forwarded to UAAC.

VII.
SETTLEMENT AMOUNT

Upon execution of this Consent Decree by the parties hereto, defendant shall allocate the sum of $7,500,000 for the settlement of this action. The monies shall be disbursed as provided herein. The distribution of the monies will be under the supervision of the Special Master who will meet with counsel for the parties to determine the most expeditious manner in which the distribution is to be made. No part of the $7,500,000 shall be used to pay administrative costs or plaintiffs' counsel's costs and fees.

Except as provided in Section XI, no portion of the $7,500,000 shall revert to the University.

VIII.
RESOLUTION OF PAST CLAIMS

For the purpose of determining eligibility to share in the Fund created in Section VII above, the parties have agreed to the creation of three subclasses. Each class member may be designated as a member of one and only one of the following subclasses:

Subclass I: Any woman on the University's full-time instructional staff as of the effective date of the Decree.

Subclass II: Any woman severed from employment on the University's full-time instructional staff during the period from December 21, 1970 to the effective date of the Decree.

Subclass III: Any unsuccessful female applicant for a position on the University's full-time instructional staff during the period from December 21, 1970 to the effective date of the Decree.

IX.
RELIEF FOR SUBCLASS I

A. The defendant shall allocate $4,000,000, for distribution to members of Subclass I in full payment of any and all claims of discrimination up to and including the effective date of the Decree. The criteria for determining class members' shares shall be length of service and current salary level. The entire $4,000,000 allocated under this section shall be distributed to members of Subclass I. Each member of Subclass I shall be informed of her choice to (1) receive her share of the $4,000,000, or (2) assign her share to the Research and Development Fund described in Section XIV. Each Subclass I member as is practicable of the number of full years of service with which she has been credited. If the Subclass I member wishes to dispute the years of service or to assign her share to the Research and Development Fund, she must notify the University within 45 days of the date of the notice.

B. Future Salary Adjustments

1. Subclass I Members Who Are Not At Top of Their Salary Schedule

a. Any member of Subclass I who claims present salary discrimination, and who is not at the top of her salary schedule as of the effective date of this Decree, may file a verified claim for salary adjustment. If any member of Subclass I believes that she is discriminated against in salary on the day following the effective date of this Decree, she shall file her claim within 90 days of the effective date of the Decree. If she does not file a salary claim within the 90-day period, she will be barred from contending that her salary on the day following the effective date of the Decree is discriminatory.

b. Claim forms, which shall be in a form agreed upon by the parties and approved by the Court, shall be supplied by defendant and will be available at each unit of the University.

c. The University shall notify each such Subclass I claimant within 60 days of the receipt of claim of the disposition thereof. If the determination is to offer an adjustment of salary, the salary adjustment offered to any claimant, if accepted, shall commence on the first day of the semester following disposition of the claim.

d. Any Subclass I member whose claim is rejected, or who is dissatisfied with the adjustment offered by the University, may seek review of the University's decision by the Special Master. The Special Master shall be limited to providing salary adjustments to the salary schedule for the claimant's rank or title as of the date of the filing of her claim. Any salary adjustment directed by the Special Master shall be effective on the date that would have been applicable under (c) above.

e. All members of Subclass I claiming present salary discrimination will be entitled to presumptions and rules governing burden of proof and persuasion established in *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 772-73 & n.32 (1976).

2. Subclass I Members Who Are At The Top of Their Salary Schedule

a. Members of Subclass I who are at the top of their salary schedule shall be entitled to file a verified claim for a one-time payment in lieu of the salary adjustment procedure set forth in B(1) above. Such claim shall be filed within 90 days of the effective date of the Decree.

b. The amount of $1,300,000 shall be established for the payment of claims under this Subsection 2. The money shall be distributed in the following manner:

(i) Any member of Subclass I making claim for the one-time payment shall file a claim form agreed upon by the parties, approved by the Court, and provided by the University. The University, based on applicable standards of law, shall make a determination as to the number of years, if any, that the claimant was discriminated against in the payment of salary since December 21, 1970.

(ii) Within 60 days of the receipt of the claim, the University shall notify each such Subclass I claimant of its determination as to the number of years, if any, she was discriminated against.

(iii) Any such Subclass I member whose claim is rejected or who disputes the number of years credited may seek review of the University's decision by the Special Master. The Special Master shall be limited to determining how many years, if any, the class member was discriminated against in salary.

(iv) All members of Subclass I claiming present salary discrimination will be entitled to presumptions and rules governing burden of proof and persuasion established in *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 772-73 & n.32 (1976).

(v) If claimants under this provision claim discrimination in promotion, they shall be required to pursue such claim through the procedures set forth in Section XIII hereof. In the event a claim for the one-time salary adjustment hereunder, the evidence received by the Special Master shall be admissible as evidence in any proceeding in which promotion discrimination is claimed.

c. After all the claims under this Subsection have been decided, either by the University's agreement or by the Special Master, the dollar value of approved claims shall be calculated as follows:

(i) the sole criterion for determining claimants' shares shall be the number of years which the claimant has been found to have been discriminated against;

(ii) the total number of years that all claimants have been found to have been discriminated against shall be divided into the $1,300,000 to determine the dollar value of each year;

(iii) each claimant's share shall be the product of her number of years that she has been found to have been discriminated against and the per year dollar value as described above; and

(iv) no claimant shall receive an amount greater than one percent of the $1,300,000. The payment shall be a one-time payment and in no manner shall the payment be considered incorporated into the claimant's salary, and it shall not be credited for pension purposes. Any portion of this Fund remaining after payments are made as provided above shall revert to the $4,000,000 allocated for Subclass I as provided in Section IXA.

X.
RELIEF FOR SUBCLASS II

A. The defendant shall allocate $1,700,000 for payment of all claims made by members of Subclass II. The entire $1,700,000 allocated under this Section shall be distributed to members of Subclass II.

B. The University shall provide notice by publication in *The New York Times*, Sunday Edition, and in the *Chronicle of Higher Education*, and by first class mail where names and addresses are known, to all members of Subclass II, within a reasonable time after the effective date of the Decree.

C. Within a reasonable time after the effective date of the Decree, the Notice of Claim form, which shall be in a form agreed upon by the parties and approved by the Court, shall be furnished by the University. The Claim form shall advise Subclass II members of the procedures established for payment of claims of discrimination in promotion, non-reappointment, retrenchment, tenure and salary.

D. The Claim form shall advise any Subclass II member who believes she was treated discriminatorily on or after December 21, 1970 in promotion, non-reappointment, retrenchment, tenure and/or salary that she must, within sixty (60) days of receipt of the form, complete it and return it to the University.

E. The University shall promptly review each claim. The determination of a payable claim shall be made solely on the basis of the information provided in the claim form, documentation provided by the class member, and any documentation provided by the University. If the University's initial determination is to reject the claim in whole or in part, it shall promptly advise plaintiffs' counsel, stating its grounds for such rejection. If a ground of initial rejection is the need for additional information, the University shall so advise plaintiffs' counsel, who may communicate with the class member. Any additional information provided by the claimant will be considered by the University in making its further determination on the claim.

F. Any claimant whose claim is again rejected as a payable claim shall be notified in writing of the decision and the basis for the rejection. The claimant may then seek review by the Special Master.

G. After all claims for Subclass II members have been considered and determined, payment shall be made in the following fashion:

1. Each claimant shall receive a maximum number of points for each payable claim, but only once for each category, as follows:***

(i)	Tenure	20 Points
(ii)	Salary (One point per year claimed from 1970)	14 Points

***Members of Subclass II shall be entitled to make claims under

(iii)	Non-reappointment or retrenchment	10 Points
(iv)	Promotion or appointment to a higher title	5 Points

2. After all the points have been assigned to all payable claims, the dollar value per point shall be calculated by dividing the $1,700,000 allocated to Subclass II by the total number of points of all payable claims.

3. Each claimant's share shall be the product of her number of points and their per point dollar value, as described above.

XI.
RELIEF ACCORDED TO SUBCLASS III

A. The defendant shall allocate $350,000 for payment of all claims made by members of Subclass III.

B. The University shall provide notice by publication in *The New York Times*, Sunday Edition, and in the *Chronicle of Higher Education* within a reasonable time after the effective date of the Decree.

C. The Notice shall advise members of Subclass III that claims of alleged discrimination in denial of employment on or after December 21, 1970 through the effective date of the Decree shall be made by filing, within 90 days after notification, a verified claim of such alleged discrimination on a form agreed upon by the parties, approved by the Court, and to be provided to the claimant upon request.

D. The University shall promptly review each claim. The determination of a payable claim shall be made solely on the basis of the information provided in the claim form, documentation provided by the class member, and any documentation provided by the University. If the University's initial determination is to reject the claim in whole or in part, it shall promptly advise plaintiffs' counsel, stating its grounds for such rejection. If a ground of initial rejection is the need for additional information, the University shall so advise plaintiffs' counsel, who may communicate with the class member. Any additional information provided by the claimant will be considered by the University in making its further determination on the claim.

E. A claimant shall be entitled to share in the Fund if it is established: (1) the claimant applied for an available position; (2) she met the requirements of that position; (3) she was formally interviewed by the University; and (4) a less-qualified male was hired for the position.

F. Any claimant whose claim is again rejected as a payable claim shall be notified in writing of the decision and the basis for the rejection. The claimant may then seek review by the Special Master.

G. No payments shall be made to any Subclass III member until all claims have been determined. The amount of each payment shall be calculated by dividing the amount of the Fund by the number of Subclass III members who have been determined to be entitled to share in the Fund. No amount greater than $3,500 shall be paid to any Subclass III claimant. Any amount remaining in this Fund after all payments to claimants have been made shall revert to the Research and Development Fund.

XII.
RELIEF FOR NAMED PLAINTIFFS

In order to acknowledge the contribution of time, effort and expenses of the named plaintiffs in representing the class, the named plaintiffs will receive "symbolic payments" from $1,000 to $3,500 in proportion to the services rendered. These payments shall be reviewed by the Special Master and recommended to the Court. Under no circumstances is the total distribution to exceed $50,000.

XIII.
PROCEDURES FOR RESOLUTION OF OTHER FUTURE CLAIMS

Complaints of sex discrimination in employment decisions on promotion, appointment to a higher title, tenure, and reappointment may be filed with the college president or his or her designee. (Step 1). If a class member files a complaint under this section, she shall be precluded from processing the same or a related complaint in any court, administrative body, or collective bargaining grievance and arbitration procedure, but she will not have to withdraw the complaint from the other forum(s) until and unless the complaint is filed with the Special Master as described below. Complaints shall be filed within 30 days after the alleged occurrence of the act of sex discrimination, or after exhaustion of internal academic review procedures at the college, if the complainant elects such internal review procedure. A decision shall be issued by the college president or designee within 30 days. The decision of the college may be appealed to the Chancellor within 20 days after receipt of the decision. If the college does not issue a decision within 30 days, the complaint may be filed directly with the Chancellor. (Step 2).

The Chancellor or his designee shall have 90 days to issue a decision on the complaint. Tenure and non-reappointment claims shall receive priority in scheduling. A decision of the Chancellor or designee may be appealed to the Special Master within 30 days after receipt of the decision. If a decision is not issued within 90 days, the complaint may be submitted directly to the Special Master. (Step 3).

The Special Master shall issue a report and recommendation on the complaint, which either side may appeal to the Court. The Special Master, in conducting proceedings on the complaint and issuing a report and determination shall be limited to the facts and applicable federal law and judicial precedent. Recommendations for an appropriate remedy may be submitted to the Special Master by the Chancellor and the complainant under this section and in any other proceeding before the Special Master.

XIV.
RESEARCH AND DEVELOPMENT FUND

The defendant shall establish a Women's Research and Development Fund in the amount of $100,000 to support relevant research projects and other educational programs. Plaintiffs will designate a representative to participate in determining policies for use of monies in this Fund.

XV.
ATTORNEYS' FEES

Pursuant to applicable law, plaintiffs will make prompt application to the Court for approval of an award of reasonable fees and disbursements, incurred up to the date of the execution of this Decree based upon the legal standards generally applicable to such awards. Counsel for the plaintiffs have agreed that the request for such fees and expenses will not exceed the sum of $1,000,000. Defendant has not stipulated to the fairness of such a request. The amounts awarded by the Court shall be paid by the defendant, and are in addition to the amount allocated for the settlement.

Plaintiffs' counsel may apply to the Court on a quarterly basis for fees and expenses incurred in connection with services provided in the enforcement or implementation of the terms of the Decree after the date of execution of the Decree. This application for fees and expenses shall be based upon legal standards generally applicable to such requests and, if approved by the Court, shall be paid by the defendant. Such payments shall not reduce the moneys allocated for the settlement.

XVI.
ADMINISTRATIVE COSTS

Defendant shall pay all costs incurred in the administration of this Decree, including fees and expenses of the Special Master, costs for notice to class members, publication, and cost of distribution of the money allocated for the settlement.

XVII.
REPORTING

A. The University shall appoint a representative who shall have the responsibility for the reporting of the information specified below.

B. The University will furnish on a periodic basis to the Court, Special Master and plaintiffs' attorneys, a report containing the following specific information:

1. report on the claims procedures, identification of claimants, nature of claims, status, or disposition; and

2. an accounting of monies distributed.

XVIII.
SPECIAL MASTER

The parties hereto agree, subject to the Court's approval, that Sol Schreiber, Esq., previously appointed by the Court as Special Master in these proceedings shall continue as Special Master under this Decree.

Consented and agreed to this 15th day of May, 1984

FREDERICK A.O. SCHWARZ, JR.
Corporation Counsel of the
City of New York
Attorneys for Defendant
100 Church Street
New York, New York 10007
(212) 566-4545

By: S/ Doron Gopstein

By: S/ Norma Kerlin

THE CITY UNIVERSITY OF NEW YORK

By: S/ Houston G. Elam

By: S/ David B. Rigney

VLADECK, WALDMAN, ELIAS &
ENGELHARD, P.C.
Attorneys for Plaintiffs
1501 Broadway, Suite 800
New York, New York 10036
(212) 354-8330

By: S/ Judith P. Vladeck

BOHRINGER, EXHIBIT G, AFFIDAVIT TO DISMISS, PP. 515-517

The City University Of New York
535 East 80 Street, New York, N.Y. 10021

MELANI v. BHE - SUBCLASS II
CLAIM DECISION

Name: CLISSURAS , ALICE

Address: 215 ADAMS ST

BROOKLYN NY 11201

Social Security #: 104-20-9440

In accordance with Section X of the Final Consent Decree in Melani v. BHE, United States District Court, Southern District of New York (73 Civ. 5434 (LPG)), your claim has been reviewed by the University. The University has decided not to contest part of your claim in this proceeding. In making this decision, the University does not admit to the validity of any claims made regarding sex discrimination.

You have been awarded the following points:

CLAIMS MADE	POINTS
Promotion or appointment to a higher title	0
Salary (7 years)	7
Total	7

The actual amount of your award will be determined after all Subclass II claims have been decided. Under the terms of the Decree, the total number of points that all claimants have been awarded shall be divided into the $1,700,000 fund to determine the dollar value of each point. Each claimant's share shall be the product of the number of points that she has been awarded multiplied by the per point dollar value.

The claim you made on promotion was denied because the dates you claim precede the period covered by the Consent Decree.

Pursuant to Section X(F) of the Decree, you may appeal within forty-five (45) days of your receipt of this decision by sending Notice of Appeal to the Special Master. Your Notice of Appeal should be sent by first class mail, or hand delivered, to the following address:

Sol Schreiber, Esq.
Special Master
(Melani v. CUNY)
Subclass II
Suite 4915
One Pennsylvania Plaza
New York, New York 10019

If you appeal, you may be represented by counsel for the class (plaintiffs' attorneys) at no personal expense. Attorneys for the class are: Judith P. Vladeck, Esq. and Joseph J. Garcia, Esq., of Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, New York 10036, 212-354-8330. If you wish, you may instead be represented by an attorney of your own choice at your own expense, or you may represent yourself.

THE NOTICE OF APPEAL MUST BE LEGIBLE AND INCLUDE THE FOLLOWING INFORMATION:

1. The caption:

NOTICE OF APPEAL
MELANI v. BHE
SUBCLASS II

2. name;

3. social security number;

4. college and department;

5. home mailing address;

6. telephone number;

7. a brief statement of the basis for appeal (the reasons you believe the University's decision to be incorrect); and

8. a statement as to whether you are (a) representing yourself; (b) represented by counsel for the class; or (c) represented by your own counsel. If you will be represented by your own counsel, you should state the attorney's name, address, and telephone number.

Copies of your Notice of Appeal should also be sent by first class mail to the University and Plaintiffs' attorneys at the following addresses:

MELANI APPEALS
SUBCLASS II
THE CITY UNIVERSITY OF NEW YORK
535 East 80th Street
New York, New York 10021

Judith P. Vladeck, Esq. and Joseph J. Garcia, Esq.
Plaintiffs' Attorneys (Melani v. CUNY)
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway
Suite 800
New York, New York 10036
(212) 354-8330

All questions should be directed to the plaintiffs' torneys.

Dated: 07/17/85

Ira Bloom
Vice Chancellor for Faculty
and Staff Relations

cc: Sol Schreiber, Esq., Special Master
Judith P. Vladeck, Esq.

CITY UNIVERSITY DEFENDANTS, MEMORANDUM IN SUPPORT, PP. 518-529

SURPEME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

ALICE CLISSURAS, :

Plaintiff, : Index No. 20522/85

-against- :

CITY OF NEW YORK, et al., :

Defendants. :

----------X

MEMORANDUM OF DEFENDANTS BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK AND NEW YORK CITY TECHNICAL COLLEGE IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINT

Preliminary Statement

Defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (collectively the "City University defendants") submit this memorandum in support of their motion to dismiss the complaint in this action on the grounds that the action is barred by the applicable statutes of limitations and that the complaint fails to state a cause of action. Defendants City of New York, Teachers' Retirement Board of the City of New York (the "Retirement Board"), Teachers' Retirement System of the City of New York (the

"Retirement System") and Department of Insurance of the State of New York (the "Insurance Department") have already moved to dismiss the complaint as to them (Bohringer Aff., ¶ 4). Those motions were granted on the ground that the four-month statute of limitations is applicable to plaintiff's claims against them and has expired (id.). (A copy of the memorandum decision dated November 19, 1985 is attached as Exhibit A to this memorandum.) Defendant Rosenberg has also moved to dismiss the complaint as to him (id.). As of the date of service of this motion, that motion is scheduled to be heard on December 16, 1985 (id.).

In her lengthy complaint, plaintiff, a former teacher at defendant New York City Technical College (the "College"), who retired on September 1, 1982, complains that her benefits from the Retirement System are substantially lower than they should be. The thesis of her complaint seems to be that she was discriminated against because of her religion and sex by virtue of inadequate counseling prior to her retirement and that, as a result, she made certain choices she now regrets. She seeks an accounting, $500,000 in compensatory damages and $2,000,000 in punitive damages (Bohringer Aff., Ex. A at p. 33).

Plaintiff filed a virtually identical complaint in the United States District Court for the Eastern District of New York, in which she alleged that she was discriminated against in violation of Title VII of the Civil Rights Act,

42 U.S.C. § 2000 e-5 (Bohringer Aff., Ex. B). On November 14, 1985, Judge Jack B. Weinstein dismissed that complaint, ruling, inter alia, that plaintiff's Title VII claim was untimely and that plaintiff should have pursued her claim that her pension has been incorrectly calculated in an Article 78 proceeding in New York Supreme Court (Bohringer Aff., ¶ 3).

As shown below, to the extent plaintiff complains about discrimination on the basis of sex, that claim is barred by the consent decree in Melani v. Board of Higher Education, No. 73 Civ. 5434 (LPG) (May 15, 1984). Plaintiff's other claims against the City University defendants are untimely.

Statement of Facts

Plaintiff was a faculty member of the College from September 1, 1948 until her retirement on September 1, 1982 (Bohringer Aff., Ex. A at ¶ 3). She began to receive pension checks on January 2, 1983 (id. at ¶ 17). She generally claims that, before retiring, she was not informed either about a thirty-year bonus or about a possible thirty-five year benefit and that all defendants discriminated against her in not so informing her (id. at ¶ 19).

Plaintiff presents a rather detailed account of her membership in various retirement systems. From 1948-1953 she was a member of New York State Public Pension Systems, and from 1953-1968 she was a member of the New York City

Employees' Retirement System (id. at ¶ 24). On September 1, 1968, she transferred to defendant Retirement System (id. at ¶ 23). In addition to the defendants' alleged failure to inform her about various options, plaintiff complains in considerable detail about various alleged errors in the calculation of her benefits. For example, she complains that the Retirement System has wrongfully and negligently maintained that she was not a member of any system for the years 1951-1953, that she had to pay $2501.54 for those years and that the amount has never been credited to her annuity (id. at ¶ 28). In addition, she claims that her pension has not been calculated on the basis of her entire 34 years of teaching (id. at ¶¶ 30-31). She even complains that the Insurance Department was "reckless" in concluding "that all of her questions had been answered by the Retirement System and that all the errors had been corrected by the Retirement System and appropriate adjustments had been made in the computation of . . . [her] benefits" (Bohringer Aff., Ex. A, ¶ 43(C)-(D)). Nevertheless, plaintiff complains that the various defendants have refused to answer her questions (id. at, e.g., ¶ 20, 43 ¶ B, (C)), that they have refused to meet with her (id. at, e.g., ¶ 20(E), 43(C)), and that they have concealed information from her (id. at, e.g., ¶ 18).

Prior to commencing this action, plaintiff relentlessly badgered the agencies which she has named as defendants herein. For example, in response to Miss

Clissuras' request for information concerning the calculation of her retirement benefits, Robert Ziskind, the City University's pension counselor wrote her on February 23, 1983 (Bohringer Aff., Ex. 5). In that letter, he explained the University's position and observed that it "disagree[d] [with her] on at least two major points very crucial to the calculation" (id.).*

In response to her requests for information regarding retirement leave and for copies of records, by letter dated September 22, 1983, Judith Bronstein, the College's Acting Dean, explained that plaintiff had received the maximum retirement leave, that payroll files prior to 1979 has been destroyed by flooding and that duplication of existing payroll records would be inordinately tire consuming and costly (Bohringer Aff., Ex. 6). By letter dated January 12, 1984, Ms. Bronstein once again responded to plaintiff's request for information (Bohringer Aff., Ex. 7). In that letter, Ms. Bronstein stated that she had "reviewed the correspondence between us during the last several months and will in this letter attempt to respond to your concerns stated in your letter, dated November 30, 1982." Ms. Bronstein also stated, by way of introduction: "Please understand we have not withheld any information regarding your service at the

* Plaintiff refers to this letter in her complaint, alleging that Mr. Ziskind "made misstatements as to plaintiff's service and as to effect of [a] loan on [her] Annuity Savings Fund" and that "he concealed the 30-year benefit" (Bohringer Aff., Ex. A, ¶ 20 (F)).

College. . . . " With regard to plaintiff's requests for payroll records, Ms. Bronstein explained:

> You appear to be primarily concerned with whether your current retirement allowance is correct. Retirement benefits are based in the main on years of service and final salary. Those figures have been given to you. Clearly your annual salary in the intervening years of your service at the College is not crucial to your retirement benefit. However, you have received W2 forms each year as well as annual statements from your retirement system. It was your responsibility to check these at the time, report any errors and see to it that corrections were made.

In her letter of January 12, 1984, Ms. Bronstein also responded to plaintiff's requests for information concerning her retirement plan for the years 1951-1953 and maximum retirement leave.

Plaintiff's various complaints about the City University defendants seem to fall into four categories: (1) that they discriminated against her on the basis of her sex and religion by failing to counsel her prior to her retirement and that the University's pension counselor and the College personnel officer refused to help her prior to that time (Bohringer Aff., Ex. A at ¶¶ 18-20); (2) that the College has negligently reported incorrect information to the Retirement System (id. at ¶ 32 (A)); (3) that the College, by failing properly to advise plaintiff, is responsible for her having made certain choices regarding her retirement benfits and account which she now regrets (id. at ¶¶ 32(B), 48(A)); and

(4) miscellaneous -- that in 1978 the College docked 20 days from plaintiff's sick leave (id. at ¶ 48(B)) and that in 1981 it incorrectly informed her that a course had been cancelled (id. at ¶ 48(C)).

As shown below, all of these claims are barred.

ARGUMENT

I. Plaintiff's Sex Discrimination Claim is Barred by the Consent Decree in Melani v. Board of Higher Education, No. 73 Civ. 5434 (LPG) (May 15, 1984).

Plaintiff's claim that the City University defendants discriminated against her on the basis of her sex is barred by the consent decree in Melani v. Board of Higher Education, No. 73 Civ. 5434 (LPG) (May 15, 1984) (Bohringer Aff., Ex. F). That decree resolved all claims by plaintiffs and class members that the Board of Higher Education had discriminated against them on the basis of sex with respect to retirement benefits in violation of Title VII, Section 1983, 42 U.S.C. § 1983, or any other federal, state or local law or regulation. Plaintiff is a member of Subclass II -- women on the University's full-time instructional staff severed from employment during the period from December 21, 1970 through May 15, 1984. Plaintiff has received notification that her account has been credited with seven additional points in accordance with the Melani decree (Bohringer Aff., Ex. G).

Therefore, plaintiff's claim that the City University defendants discriminated against her on the basis of sex must be dismissed.

II. Plaintiff's Remaining Claims Are Barred by the Applicable Statutes of Limitations.

Plaintiff's remaining claims -- that the City University defendants discriminated againt her on the basis of her religion, that they reported incorrect information to the Retirement system and that they improperly docked 20 days from her sick leave and erroneously told her a course had been cancelled -- are all barred by the applicable statutes of limitations.

Because plaintiff's claim that she was discriminated against on the basis of her religion is wholly conclusory, it should be dismissed for failure to state a cause of action. In any event, such a claim is barred. If it is viewed as a claim that the City University defendants violated the Human Rights Law, N.Y. Exec. L. § 296(1)(a), then it is barred by the three-year statute of limitations provided in CPLR § 214(2) applicable to such claims. Murphy v. American Home Products Corp., 58 N.Y.2d 293 (1983). Plaintiff's claim accrued at some time prior to her retirement on September 1, 1982. The summons and complaint in this action were effectively served on the City University defen-

dants on October 30, 1985 (Rohringer Aff., ¶ 8). Therefore, plaintiff's claim that the City University defendants discriminated against her on the basis of her religion is barred.

To the extent plaintiff has a cause of action against the City University defendants with respect to her claims that they have reported incorrect information to the Retirement System and her miscellaneous claims, those claims could be litigated only in an Article 78 proceeding. See CPLR § 7803(3). However, such a proceeding now would be untimely. CPLR § 217 provides, in pertinent part:

> Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final upon the petitioner. . . .*

Plaintiff knew at the very latest in February 1983 or shortly thereafter when she received Mr. Ziskind's letter (Rohringer Aff., Ex. C) that the University disagreed with her

* "The 'determination' which CPLR 217 speaks of, and whose moment of finality starts the four months, applies not only to what is strictly speaking 'certiorari,' where the determination follows a quasi-judicial hearing mandated by law, but also to 'mandamus to review,' where an administrative determination involves discretion but does not require a plenary hearing. The involvement of discretion, therefore, is one strong indicator that the 'final determination' moment starts the four months." D. Siegel, New York Practice § 566, at p. 792 (1978) (footnote omitted). See also J. McLaughlin, Practice Commentaries, C 217:1 at p. 508 (McKinney 1972); see generally 8 Weinstein, Korn & Miller, New York Civil Practice, ¶ 7804.02 (1983).

position regarding the calculation of her pension benefits. Further, she knew when she received Ms. Bronstein's January 12, 1984 letter, at the very latest, that the College had given her all payroll information it could give her and that, with respect to sick leave, she had been credited, in the College's view, with the maximum leave allowable.

The claims plaintiff raises in this action have been the subject of correspondence with the City University defendants over a period of several years, and plaintiff has known for at least two years the City University defendants' position concerning her various complaints. Therefore, this action is barred, and plaintiff may not argue that her repeated demands extend the limitations period. See Shields v. Hofstra University, 77 A.D.2d 867 (2d Dep't 1980); In re Greenbaum, 48 A.D.2d 969 (3d Dep't 1975). Cf. In re De Milio, 55 N.Y.2d 216 (1982) (where a probationary employee's employment is terminated and he has no right to a hearing, the four-month period begins to run from the date of his dismissal, not from the date of the refusal of his request for reconsideration).

In Greenbaum, petitioners contested their failure of the examination required for licensure as Nursing Home Administrators. Holding that the four-month period commenced when they received notice of their failure, the court rejected their argument that their petition was in the nature of a mandamus to compel:

> The petition explicitly attacks the procedures employed in developing and grading the examinations. It quite obviously seeks review of respondents' various determinations in administering those tests, yet raises no genuine question of any failure on respondents' part to perform any duty enjoined upon them by law. As a result, petitioners' contention that the instant proceeding is in the nature of mandamus to compel certain action, for which the appropriate time limit would commence running upon their demand and refusal of access to the exmaination questions and answers, is without merit.

48 A.D.2d at 969-70 (citations omitted).

In Shields v. Hofstra, plaintiff was a law student who brought a contract action challenging her academic dismissal from defendant law school. Hofstra argued that the action was properly an Article 78 proceeding and that it was time-barred. The court held that the complaint failed to state a cause of action but also agreed with Hofstra that, had the action been filed as an Article 78 proceeding, it would have been untimely:

> Assuming, without deciding, that plaintiff's claims of arbitrary and capricious conduct by defendants, although not arising out of contract, are cognizable in a proceeding pursuant to CPLR article 78, we agree with defendants that, if this action were to be converted to such a proceeding (see CPLR 103, subd [c]), the proceeding would be time barred since it was commenced more than four months after plaintiff received final notice of the law school determinations that she was academically ineligible to continue her studies and that her application for a second extension of her conditional advancement had been denied.

> Plaintiff's request for a reconsideration of these determinations . . . did not operate to extend the limitations period.

77 A.D.2d at 869 (emphasis added). Similarly, even if plaintiff had cognizable claims against the City University defendants, who have not even allegedly withheld any benefits from her, those claims could the litigated only in an Article 78 proceeding, which would, however, be untimely if commenced now.

CONCLUSION

It is now the law of the case that the four-month limitation period is applicable to plaintiff's claims against the agencies she has named as defendants herein and that that period has expired. This Court should dismiss the complaint in this action.

Dated: New York, New York
November 26, 1985

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for City
University Defendants
and Defendant Insurance
Department
Two World Trade Center
New York, New York 10047
(212) 488-5744

LITIGATION BUREAU:

STANLEY A. CAMHI
SUE BARNETT BOHRINGER
Assistant Attorneys General
Of Counsel

CITY UNIVERSITY DEFENDANTS, EXHIBIT A, MEMORANDUM IN SUPPORT

FORM 81 B 2M6

MEMORANDUM

SUPREME COURT COUNTY

ALICE CLISURRASM

Plaintiff,

vs.

CITY OF NEW YORK, et al.,

Defendants,

By James H. Shaw, Jr. J. S. C.

Dated November 19, 1985

Index No. 20522/85

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsquent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.,

Settle Judgment

James H. Shaw Jr.

J.S.C.

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS.
PP. 531-543

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, :

Plaintiff, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, :

Defendants. :

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO CITY UNIVERSITY DEFENDANTS' MOTION TO DISMISS COMPLAINT

Index No. 20522/85

- x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

ALICE CLISSURAS, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action, and I am representing myself in this action, to my disadvantage, due to the unwillingness of attorneys to represent me. I have made extensive efforts to retain an attorney which include meeting with over 30 attorneys, approaching the President of the Bar Association and the New York County Lawyers' Association for referrals, and contacting several law schools, all to no avail.

2. This affidavit made in opposition to the motion to dismiss the complaint made by defendants Board of Higher Education of the City of New York (hereinafter "Board"), City University of New York (hereinafter "CUNY"), and New York City Technical College (hereinafter "College"), (hereinafter collectively "City University defendants"), on the grounds that the complaint states causes of action against the City University defendants and that the causes of action are not barred by any statutes of limitations.

3. I was employed at the College for 34 continuous years from September 1, 1948, to September 1, 1982. My pension was calculated for 29 years of service and not for 34 years of service as it should have been calculated. The use of 29 years is fraudulent. In addition, the use of the 29 years was concealed from plaintiff by each and every defendant. In the Report of Actuary which plaintiff received on January 17, 1983, there is no indication of years of service and no explanation of the pension plan by which the calculation was made. At no time has any defendant revealed the New York State Education Law pension plan which pertains to CUNY faculty. The pension plan has not been stated by any one of the defendants to date. Plaintiff has not been allowed a hearing on her claims by any one to date. In January of 1983, plaintiff was informed, in response to her questions, that the pension plan used for

calculating plaintiff's pension is the one in the Administrative Code of the City of New York, Chapter 20. This information was fraudulently provided by the Teachers' Retirement System of the City of New York, since the pension plan which prevails for CUNY is in the New York State Education Law. Plaintiff was told this by the fiduciary Pension System and was not disabused of this by any defendant. In addition, the Pension Officers of the Professional Staff Congress/CUNY (hereinafter "Union") and of CUNY, in response to plaintiff's questions, perpetuated the fraud in their written responses as to the calculation of plaintiff's pension by showing the calculations in the semblance of the §B20-41.2 formula. From January, 1983, forward plaintiff expended considerable time and effort to read and comprehend Code B20, since not one of the defendants would answer any questions and since plaintiff was led to believe by fiduciaries that the plan was in the Code. All the defendants concealed the correct pension plan and all the defendants have not revealed it to date. Plaintiff was given three versions of the pension calculation by the Retirement System (attached hereto as "Exhibit L"). All of these versions included material errors and/or omissions, such as Annuity deficit, incorrect minimum accumulation, and outside service; and, in addition, all of these versions were not based on 34 years of service and were in the semblance of Code B20. Mr. Robert Ziskind, Pension Officer at defendant CUNY, sent a letter to plaintiff in which he continued

the misstatements as to deficit, outside service, and semblance of Code B20 plan. (Ziskind February 23, 1983, letter is attached hereto as "Exhibit M.") Mr. Ziskind's deficit explanation differs in content and amount from the deficit explanation made by the Pension System (Exhibit L). Mr. Ziskind did not agree to meet with plaintiff until after retirement. At that meeting, plaintiff showed Mr. Ziskind the Report of Actuary and the Pension System's certification of her 34 years of service as New York City Service. At that point, Mr. Ziskind counseled plaintiff to go to her Union and that the Union should request a change in the amount of the pension and that if the change was not made the Union should use an attorney to get the change. The Union did retain the defendant Rosenberg attorney as a result and so informed plaintiff in a letter from Ms. Beryl Weinberg. However, after the February 15, 1983, meeting with defendant Rosenberg, Mr. Ziskind changed to the position he represents in his February 23, 1983, letter. (Ms. Weinberg's February 2, 1983, letter is attached hereto as "Exhibit M".) At the end of his letter, Mr. Ziskind indicated that he did not feel that there could be any fruitful exchange should plaintiff wish to pursue this matter. This was a total about face in Mr. Ziskind's position and information. From that point, plaintiff could not get information from any of the defendants. It was well into 1985 when plaintiff was finally able to piece together the method

by which her pension was calculated and for how many years. Plaintiff did not know that there was a pension plan in State Law for CUNY faculty and plaintiff did not know that her pensio had been calculated for 29 years instead of 34 years until well into 1985. These causes of action were concealed by defendants and are still being concealed by defendants. At no time has any defendant revealed the pension plan which is applicable to plaintiff. It took plaintiff from January, 1983, to August, 1985, to discover the information she has as to the causes of action. In July of 1985, she received mail from CUNY which showed that they certified her service as ending in 1977 instea of 1982 and thus plaintiff was able to use the figures she had discovered to that point to arrive at the pension amount she ha been given. Plaintiff did not have sufficient information up t that point to know what the causes of action were. All of the defendants had concealed and are still concealing the causes of action.

4. Thus, as to the first cause of action, the calculation of the pension, as set forth in plaintiff's complaint, CUNY concealed the correct pension plan from plaintiff, providi instead a false version, and falsely certified plaintiff's service as 29 years instead of 34 years. As to these allegations, the circumstances show that these actions of CUNY were done in conspiracy with the other defendants. The reduction of plaintiff's service from 34 years to 29 years primarily serves

to deprive plaintiff of a 30-year plus retirement allowance and the correct amount of her pension, a deprivation of upwards of $10,000 per year. This deprivation was done discriminatorily, in addition, since male and/or non-Christian teachers have been given 30-year retirement allowances which resulted in substantial amounts added to their pensions.

5. As to plaintiff's second cause of action, credit for prior service, plaintiff had been trying for many years to get credit for her first five years at the College, 1948-1953. In 1980, she received credit for 2-1/2 of those years and after making many inquiries, finally, in 1980, Mr. Ziskind informed her that credit should have been granted automatically for said five years. He told her that if she contacted Mrs. Tricarico at the Pension System that she would certainly take care of the matter. Plaintiff contacted Mrs. Tricarico who informed her that through some error plaintiff had not been automatically credited for the five years and that she would take care of the matter for plaintiff. After that point plaintiff could not reach Mrs. Tricarico under any circumstances. Mr. Ziskind, as indicated above in paragraph No. 3, after seeing the Pension System's certification of plaintiff's service informed her that the Union should take action to correct plaintiff's pension. Then, in his February 25, 1983, letter (Exhibit M herein) he describes plaintiff's service as outside service and City service. At no time did any defendant ever reveal the rules and regulations for

the crediting of prior service. Plaintiff discovered the rules after the purchase in 1981 of 2-1/2 years of College service as outside service at a cost of $2,501.54, an amount which was not placed in plaintiff's Annuity. The rules for crediting of prior service was concealed by all defendants. Plaintiff discovered the rules after the purchase. Plaintiff also discovered after the purchase that colleagues had been granted automatic credit for prior service and in cases where no contributions had been made to any pension system. Thus, these events point to conspiracy on the part of defendants to conceal the improper manner in which plaintiff's prior credit was made and, in addition, plaintiff was discriminated against in this process.

6. As to the first and second causes of action as detailed in the complaint and above, the College was and is actively part of the conspiracy, discrimination, and fraud. The Pension/Personnel Officer at the College provided plaintiff with misinformation which led to her withdrawal of pension contributions after her first five years at the College. Said Officer throughout the years misinformed plaintiff that the first five years could not be credited because the contributions had been withdrawn. She misinformed plaintiff that plaintiff could not get credit for one year of private school teaching. When a court action allowed plaintiff to gain credit for the first 2-1/2 years of service, said Officer would not give her the

needed pension number. Said Officer blocked credit for the second 2-1/2 years by not giving plaintiff the name of the pension system to which the College faculty belonged during those years. Ms. Judith Bronstein, Acting Dean for Professional Personnel at the College, also blocked plaintiff from the acquisition of this information, among other much needed information. After retirement, plaintiff discovered a letter which said Pension Officer had written to the Pension System in which she certified plaintiff's dates of promotion incorrectly, making a difference of five years in the date of promotion to assistant professor, stating it as 1959 instead of 1954. Plaintiff's membership in pension system for the years 1951-1953 was incorrectly reported to the Pension System. Thus, the Pension System had in its files papers showing that plaintiff was not a member of a pension system during 1951-1953. Plaintiff has contributed to a pension system for all of the 34 years of service; however, she withdrew the contributions made the first five years. Plaintiff was not aware of the letter which misstated her promotional dates (attached hereto as Exhibit N) and was not aware of the paper in Pension System's files showing misstatement for 1951-1953 (attached hereto as Exhibit O). Despite many requests, the College will not give plaintiff any payroll records. At one point, plaintiff was informed that they were dust laden and at another point that personnel is not available to do this and at still another point that they are flood

damaged. However, the College will not give plaintiff any records even after the flood of 1979. The Retirement System shows two salaries for plaintiff in 1982, among many other inconsistencies. However, the College will not provide any records in order to correct the problems. The plaintiff is not in computer at the Pension System and the Pension System will not provide plaintiff with its financial records of her service. Any statements which have been sent by the Pension System to plaintiff in response to questions have been newly prepared. At no time has plaintiff received a copy of her records. The same applies to the College. The College has provided much misinformation to the Pension System and yet the College will not provide any documentation to correct the errors or to show that their records were correct. In addition to the pension deprivations, the College has deprived plaintiff as to her sick leave by discriminatorily reducing it by 20 days, as to payment for teaching when she was fraudulently informed that a course was cancelled and it had not been cancelled, as to repayment of deferred salary, and other deprivations. After many attempts to straighten out even some of the problems via a lengthy correspondence with the College, I sent a letter on January 26, 1984, indicating what I have set forth above. (Said letter is hereto attached as "Exhibit P.) The records of the College and the Pension System are essential to the proof of the statements and arguments made by those defendants and yet they in their

fiduciary capacities refuse to supply the necessary records. Discovery is an essential proceeding in this action. The defendants have not supplied documentation to controvert the plaintiff's claims.

7. As to the affidavit in support of of the City University defendants' motion to dismiss the complaint, plaintiff sets forth the following:

a. In paragraph No. 2 (Bohringer Aff., p. 2), attorney Bohringer reduces plaintiff's four causes of action as set forth in detail in the complaint to incorrectly calculated pension and failure to counsel. Plaintiff's second, third, and fourth causes of action are not considered. She makes no mention of the improper method of crediting prior service, of the many errors in plaintiff's Statements of Accounts, and of the deprivation of rights.

b. In paragraph No. 3 (Bohringer Aff., p. 2), as to the motions to dismiss, one of which was brought by attorney Bohringer, she does not indicate that she did not orally argue for the motion and she did not argue for an Article 78 proceeding. Plaintiff is appealing the Federal dismissal.

c. In paragraph No. 4 (Bohringer Aff., p. 2), as to Justice Shaw's memorandum decision to dismiss the complaint as to the City Defendants and the Department of Insurance of the State of New York, in holding that plaintiff's claims are subject to a four-month Statute of Limitations and are time barred, Justice Shaw does not indicate which claims are subject to the four-month Statute and does not comment on the statutes of limitations for fraud, discrimination, conspiracy, negligence, and contractual and fiduciary breach involved in plaintiff's action.

d. In paragraph No. 5 (Bohringer Aff., p. 3), attorney Bohringer gives only one illustration of the many matters raised by plaintiff as to plaintiff's contacts with the City University Defendants. As to her use of Mr. Ziskind's letter, her argument that plaintiff knew shortly after February 23, 1983, that CUNY disagreed with her arguments is incomprehensible. Mr. Ziskind's letter is discussed in this affidavit in detail above in paragraph No. 3. Mr. Ziskind in his letter presents his pension arguments in

the form of Code B20, as shown by the percentages he uses in the letter. He makes reference to outside service and to an Annuity deficit. Plaintiff did not know that Code B20 was not the plan to which she was subject at the time that Mr. Ziskind wrote to her. Plaintiff's arguments were in the nature of the Code plan because that was the plan plaintiff believed applicable based on the deception of the fiduciaries and pension experts to that effect. At the time of the letter, plaintiff did not know the rules for automatic credit for prior service. Mr. Ziskind concealed the State pension plan applicable to plaintiff and the rules for crediting prior service. If plaintiff makes a point to the CUNY Pension Officer and he in his position of trust and expertise informs her that she is not right and she has no source of information to controvert what he is saying how does that make plaintiff knowledgeable about the causes of action? Plaintiff did not know about the correct pension plan and that her pension was based on 29 years of service until well into 1985. The defendants concealed these causes of action from plaintiff; not one revealed them.

e. In paragraph No. 6 (Bohringer Aff., p. 3), attorn Bohringer refers to a September 22, 1983, letter of Acting Dean Bronstein as to the calculation of retirement leave. Dean Bronstein does not explain in her letter that plainti had 180 days of leave and after 20 years the College arbi- trarily and discriminatorily reduced the days to 160. Plaintiff comes under the grandfather clause in this matte and thus Dean Bronstein's explanation does not apply to plaintiff as it did not apply to the members of the facult whose 180 days were not decreased to 160. This deprived plaintiff of the correct number of days for Travia leave upon retirement. Also in No. 6 attorney Bohringer refers to the comment that the Colleg will not provide payroll records for plaintiff either before or after the 1979 flo In the September 22 letter, Dean Bronstein states that plaintiff received attendance records dating back to 1950. She does not say how those records escaped flood damage. Also, those records really date back to 1969 and not to 19 as Dean Bronstein states.

f. In paragraph No. 7 (Bohringer Aff., p. 4), attorn Bohringer refers to a January 12, 1984, letter of Acting Dean Bronstein as evidence that Ms. Bronstein responded t plaintiff's request for information. Attorney Bohringer states that Ms. Bronstein responded to plaintiff's reques for information concerning the retirement system for 195 1953. Ms. Bronstein responded in that letter that the

system covering the College during the years 1951-1953 was the New York City Employees' Retirement System. Ms. Bronstein knew that the faculty went with NYCERS in 1953 when we left the State pension systems. But, even beyond this deception, the letter which Attorney Bohringer uses in her Exhibit E to her Affidavit has been altered; someone changed "City" to "State" in the name of the System. This change was not on plaintiff's letter. See plaintiff's copy of page 1 of the January 12 letter attached hereto as "Exhibit Q." Ms. Bronstein never informed plaintiff that she knew that it was the New York State Employees' Retirement System even though plaintiff brought this to the College's attention in plaintiff's January 26, 1984, letter (Exhibit P hereto attached) and Dean Bronstein wrote a subsequent letter in which she made no mention that she knew which pension system it really was. Plaintiff finally found out the name of the system in April of 1984, in spite of defendants' effort to block acquisition of this information. The misinformation in the January 12 letter and the deceptive alteration illustrate clearly in one example the situation and what plaintiff has been subjected to in capsule form. In her Exhibits attached to Attorney Bohringer's Affidavit in Support of Department of Insurance motion to dismiss the complaint, Attorney Bohringer includes a letter which was sent to plaintiff dated June 7, 1985, but the date in Attorney Bohringer's Exhibit letter was March 27, 1985. No explanation has been given for this alteration. Also, in the other Exhibits in that Affidavit, Attorney Bohringer includes plaintiff's letters to the Insurance Department without any of the enclosures or attachments. The letters were essentially letters of transmittal while the enclosures were documentation of the claims plaintiff was making.

g. In paragraph No. 8 (Bohringer Aff., p. 5), as to the Melani decision, the decree in IV C allows for prosecution of member claims at the expense of a share of the Decree moneys. Also, the pension aspect of the claims has not been settled as yet.

h. In paragraph No. 9 (Bohringer Aff., p. 5), as to service of summons and complaint, the City University defendants were served with an alias summons and complaint on October 30, 1985. Of the three City University defendants, the College admitted the first service of those papers.

i. In paragraph No. 10 (Bohringer Aff. p. 5), as to plaintiff's claims against the City University defendants, the claims are not time barred as set forth in plaintiff's accompanying memorandum and the discrimination claim on the basis of sex and religion is not barred by Melani.

8. Plaintiff's claims are set forth in detail in the complaint. The above is not intended as a full statement of all the claims and causes of action.

9. WHEREFORE, plaintiff prays that the motion for dismisssal of the complaint as to the City University Defendant be denied.

Dated: Brooklyn, New York, December 12, 1985.

ALICE CLISSURAS

Sworn to before me this

day of December, 1985

_____

PLAINTIFF'S EXHIBIT L, AFFIDAVIT IN OPPOSITION, PP. 544-546

TEACHERS' RETIREMENT SYSTEM, CITY OF NEW YORK — 40 WORTH STREET, NEW YORK, N.Y. 10013
(PLEASE RETAIN THIS COPY FOR INCOME TAX PURPOSES)

REPORT OF ACTUARY

To The Teachers' Retirement Board
of the City of New York:

12-1-1982

I hereby certify that in the event of the Service/~~Disability~~ Retirement on September 1, 1982
of Alice Clissuras registered as an active member No. 130358 the following regular retirement
allowance may be granted to ~~him~~/her under the provisions of law and on the basis of the mortality tables last approved by the Retirement
Board, with four per cent compound interest, with payments to begin immediately/~~xxx~~

Member's Date of Birth August 23, 1926 Salary Base Used $ 42,643

FUND FROM WHICH PAYABLE	Initial Reserve	Annual Amount	Monthly Amount
Annuity Reserve Fund	$ 4,286.24	$ 310.56	$ 25.88
Regular Pension	$ 390,257.05	$ 28,273.35	$ 2,356.11
I.T.H.P. Pension	$ 35,903.78	$ 2,601.12	$ 216.76
Pension Reserve Fund No. 1*	$ 426,160.83	$ 30,874.47	
TOTAL FIXED ALLOWANCE	$ 430,447.07	$ 31,185.03	$ 2,598.75
Variable Annuity Reserve Fund	——— units	——— units	——— units
Variable Pension Reserve Fund	——— units	——— units	——— units
TOTAL VARIABLE ALLOWANCE	——— units	——— units	——— units

*Includes $ ——— which should be transferred from the Military Contribution Fund.

Figured by PK Date 12-1-82 Checked by [illegible] Date 12-1-82

FIRST CHECK PAID 12 31 82

[signature] CHIEF ACTUARY, RETIREMENT BOARD

SUPPLEMENTARY REPORT OF ACTUARY

On _____ 19__, the above named member filed in this office an election to have his/her allowance paid u
the provisions of Option No. _____ and nominated _____
s beneficiary. As a result of such election the following allowances are payable in lieu of those shown above.

Joint Date of Birth _____

FUND FROM WHICH PAYABLE	ANNUAL ALLOWANCE	MONTHLY ALLOWANCE
Annuity Reserve Fund	$	$
Regular Pension	$	$
I.T.H.P. Pension	$	$
Pension Reserve Fund No. 1	$	
TOTAL FIXED ALLOWANCE	$	$
Variable Annuity Reserve Fund	units	units
Variable Pension Reserve Fund	units	units
TOTAL VARIABLE ALLOWANCE	units	units

Figured by _____ Date _____ Checked by _____ Date _____

FOR INCOME TAX PURPOSES ONLY
COST OF OUTSIDE SERVICE $ 25015.4
CITY CONTRIBUTION PRIOR TO 1939 $ _____
MEMBER'S TOTAL CONTRIBUTIONS $ _____ (CONSIDERATION PAID)

UNIT VALUE AT DATE OF RETIREMENT _____

_____ CHIEF ACTUARY, RETIREMENT BOARD

STENCILED 12-29-82

FINAL DISPOSITION

At the meeting of the Teachers' Retirement Board on Jan 20, 1983 the retirement of
Alice Clissuras from active service was approved and the annual retirement
allowance of $ 31,185.03 and -- units, as stated above, to be paid in monthly installments, was
authorized, with payments to begin immediately/~~on~~

The said retirement to be effective as of September 1, 1982

Retirement No. 60876
73:72:72 WSL # 118770

Wallace F. Sullivan
EXECUTIVE DIRECTOR, RETIREMENT BOARD

The City of New York

TEACHERS' RETIREMENT SYSTEM
Office of the Actuary
40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-7677

JONATHAN SCHWARTZ, *Chief Actuary*

RETIREMENT BO
VICTOR F. CONDE
Chairman
BERNARD GOLDS
HARRISON J. GO
REUBEN W. MIT
JAMES F. REGAN
ISAIAH ROBINSO
JOSEPH SHANNO

Refer To Registry No R6

FEB 7 1983

Miss Alice Clissuras
P.O. Box 1686
Brooklyn, N.Y. 11201

Dear Miss Clissuras:

This is in response to your recent inquiry relative to your retirement allowance. Your regular unmodified or maximum retirement allowance payable on retirement September 1, 1982 is $31,185.03 per annum computed as follows:

(1)	50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	=	$ 21,32
(2)	Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= (plus)	1,27
(3)	Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643.00	= (plus)	8,33
(4)	Plus the actuarial equivalent of the Increased-Take-Home-Pay accumulated after 20 years of Career Pension Plan service $19,274.66 ÷ 13.803	= (plus)	1,39
(5)	Less the actuarial equivalent of the deficit in the Annuity Savings Fund $15,857.85 ÷ 13.803	= (minus)	1,14
	Total Maximum Allowance		$31,18

Very truly yours,
Jonathan Schwartz
Chief Actuary

by: Irving Hirsch
Chief, Benefit Certification Divisi

(1) Annuity

Actuarial equivalent of the Annuity Reserve Fund $4,286 ÷ 13.803		$ 310.56	Rounded up next higher multiple of 1

(2) Regular Pension

(a) 50% of annual compensation of $42,643.00 on account of 20 years of Career Pension Plan service	= $21,321.50		
(b) Plus the annual allowance of 1.2% of annual compensation for each year of purchased outside service based on 2.5 years of service and an annual compensation of $42,643.00	= 1,279.29		
(c) Plus the annual allowance of 1.7% of annual compensation for each year of creditable service over the 20 years of Career Pension Plan service, based on 11.5 years of service and an annual compensation of $42,643.00	= 8,336.71	$30,937.50	
(d) Less the actuarial equivalent of the minimum accumulation* $20,144.09 ÷ 13.803	= 1,459.40		
(e) Less the actuarial equivalent of the Increased-Take-Home-Pay Reserve as of 20 year date $16,629.12 ÷ 13.803	= 1,204.75	. 2,664.15	
Regular Pension Reserve is $28,273.35 x 13.803 or $390,257.05		$28,273.35	

3) Increased-Take-Home-Pay Pension

Actuarial equivalent of the ITHP accumulation $35,903.78 ÷ 13.803	$ 2,601.12	Rounded down to next lower multiple of 1
Total Maximum Allowance	$31,185.03	

Minimum accumulation is the sum of required contributions in the New York State Teachers' Retirement System, New York City Employees' Retirement System and the Teachers' Retirement System during the first 20 years of service with interest to payability date.

The City University of New York

Office of the Vice Chancellor for Faculty and Staff Relations

535 East 80 Street, New York, N.Y. 10021
212/794-5341

PLAINTIFF'S EXHIBIT M, AFFIDAVIT IN OPPOSITION, PP. 547-548

February 23, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:

I will attempt to answer your request for information in the light of what I understand to be the actual situation rather than as you presented it to me in your letter.

We disagree on at least two major points both very crucial to the calculation:

1. Your years of credited service, as noted by the Teachers' Retirement System, are not all credited as City service. The years include a certain amount of purchased service. The purchased service counts as 1.2% per year, not as 2.5% years and not as 1.7% years.

So, we disagree on what 34 years of service represents as the pension portion. You maintain that it should count as 72.8%. Obviously, TRS counted it as a little less. If you purchased 4 years of service, then the pension would calculate as follows:

4 years x 1.2%	=	4.80%
20 years x 2.5%	=	50.00% *
10 years x 1.7%	=	17.00%
		71.80%

* 50% provided you have the minimum accumulation in your Annuity Savings Fund.

2. You indicated to me in our discussion that you had taken out a substantial loan prior to retirement as well as having previously taken out excess contributions. Upon retirement, the loan was, in effect, cancelled and your ASF account reduced accordingly, thereby causing a deficit. The deficit reduces the 50% pension figure by the actuarial equivalent of the deficit. For a female, age 56, the actuarial equivalent is about $72. a year per $1,000. Thus, a

Professor Alice Clissuras: February 23, 1983

$10,000 deficit would reduce the 50% by $720 a year; a $15,000 deficit reduces it by $1,080 a year. Therefore, a 71.8% (or a 72.8%) pension would be further reduced by the appropriate dollar deficit. A $1,080 deficit-caused reduction would then make the pension 69+%.

Based on the above areas of disagreement and the information contained in your letter, it would not be possible for me to provide any calculation for you unless I am provided with the following data:

Years of Purchased Service
Years of City Service

Amount of Excess Withdrawn
Amount of Outstanding Loan

I look forward to hearing from you if you wish to pursue this matter further, but I really believe that our areas of disagreement would preclude any fruitful exchange.

Very truly yours,

Robert Ziskind
University Pension and
Welfare Benefits Officer

RZ:bt

cc: Ms. Beryl Weinberg, PSC
Ms. Claire Moses, TRS
Mr. Jonathan Schwartz, TRS

PLAINTIFF'S EXHIBIT N, AFFIDAVIT IN OPPOSITION
(TYPOGRAPHICAL ERROR IN AFFIDAVIT, P. 4, REFERRED TO AS EXHIBIT M)

PSC/CUNY | Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

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Mary Pearce
Coordinator, Membership Department
D. Nicholas Russo
Director, Legal Affairs
Carol Sims
Associate Director, Communications
Beryl Weinberg
Director, Staff Relations
Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

February 2, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

This is to inform you that the Professional Staff Congress/ CUNY has decided to support a legal action for you against the New York City Teachers Retirement System in order to gain the information you desire and to correct any errors that have been made in your calculations.

We have retained the firm Shapiro, Shiff, Beilly, Rosenberg and Fox to represent you in this matter.You should contact Louis Rosenberg, Esq. His office is located at 225 Broadway, New York, New York, 10007. Please call Mr. Rosenberg at 267-9020 for an appointment at your earliest convenience.

I trust you find this satisfactory.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
cc: Louis Rosenberg, Esq.

American Association of University Professors
American Federation of Teachers Local 2334 • New York State AFL-CIO
New York State United Teachers • New York City Central Labor Council

PLAINTIFF'S EXHIBIT O, AFFIDAVIT IN OPPOSITION, PP. 550-551

...EW YORK

...ST, BROOKLYN, N. Y. 11201 -- 643-2985

August 1, 1968

Records Division
Teachers Retirement System
40 Worth Street
New York, N. Y. 10013

Attention: Mrs. Miller

Dear Mrs. Miller:

Per your telephoned request, the appointment dates for Prof. Alice Clissuras are as follows:

Date		Title
9/1/48	N. Y. State Service	Instructor
9/1/53 '54	City Service	Instructor
10/1/59		Asst. Prof.
9/1/60		Assoc. Prof.
9/1/67		C. C. Professor

Her present salary is $16,130.00.

Very truly yours,

Frieda Berger

(Mrs.) Frieda Berger
Personnel Office

FB:jm

Alice E. Clissura #130358

period 9/1/48-2/28/51. Nyc Comm College was known as Ny State Institute of Applied Arts + Sciences - a state college - member held membership in Ny State Teachers' - withdrew funds - but was able to transfer 2 yrs 6 mos 0 days under Chap 974

3/1/51 - 9/1/53 Nyc Comm still a state college - member did not hold membership in state system - was able to purchase 2 yrs 6 mos 0 days

9/2/53 - 11/1/68, Nyc Comm became city college 9/1/53, member joined Nyc Employees' and transferred 15 yrs 2 mos 1 day

PLAINTIFF'S EXHIBIT P, AFFIDAVIT IN OPPOSITION, PP. 552-554

215 Adams Street
Brooklyn, NY 11201
January 26, 1984

New York City Technical College
President Ursula Schwerin
300 Jay Street
Brooklyn, NY 11201

Dear President Schwerin:

It seems that you and your staff have no intention of responding to the questions and/or problems which I have been presenting to you over a period of time now in a series of letters.

This reluctance to respond persists in terms of my latest inquiry for information. A short time ago I called Mrs. Stroman, deferral liaison, regarding the calculation of the deferral. She would not tell me the basis on which the deferral amount was determined in principle; the only thing she told me is that I am entitled only to two weeks of deferred pay. This is incorrect. Salary entitlements were deferred during the deferral period of October 1, 1975, through September 8, 1978. Contract increases and COLAs were deferred. Mrs. Stroman said that there is no worksheet available and there is nothing in writing to explain the amount of the deferral as shown on the notification letter. Again, she told me that there is nothing in writing to explain the deferrals, that she could not explain in principle how they were determined, and that I am entitled to the two-week pay deferral only. Will you please confirm or correct this position in writing? There is a deadline on this matter and there is no information from the College.

In her letter of January 12, Miss Bronstein continues the dissemination of misinformation and non-information which has characterized the responses of the College to questions over these many years, as follows:

> In response to my inquiry regarding the retirement system which covered the College during the years 1951-1953, Miss Bronstein wrote, "We believe the retirement system . . . was the New York City Employees Retirement System." Who are the "We" referred to and why is it <u>believed</u> instead of <u>is</u>. In the least likelihood of not knowing, a quick check by someone at the College could have verified the specific system to which the faculty made contributions. I wrote to several agencies regarding this matter, including NYCERS and each one referred me to my College for this information. NYCERS wrote that my membership with them started September 2, 1953. NYCTRS has in its records that I was not a member of any retirement system during 1951-1953. This is totally incorrect. Now, it seems questionable that no one at the College will supply me with the name of the system to which the College belonged in 1951-1953. Miss Bronstein did not answer that question.

I have been raising the question of the 20-sick leave days which were arbitrarily taken from me in 1978 which was my 30th year of grandfathered service. Miss Bronstein does not answer any of the questions which were raised in my letter of September 29, even though she indicates in her letter of January 12 that she reviewed the correspondence. Why were the days taken from me in 1978? Why were the days not taken from all faculty if there is no benefit and the legal limit is 160 days? Ms. Weinberg of the PSC informed me that I should have been compensated for those days under grandfathered service.

As to payroll records, this is now my sixth request. Whenever we had a change in amounts of pay, we were not given anything in writing to explain the change, except for an early, short period of time when a brief memo was attached to each changed paycheck. Each time I asked a question regarding the unexplained changes, I was told that the amount on the check was correct and that payroll did not have any schedules against which the amounts could be checked. NYCTRS has a letter from Mrs. Berger, dated August 1, 1968, which shows incorrect dates of Title--10/1/59 Asst. Prof. and 9/1/60 Assoc. Prof. I was not aware of the errors in TRS files since my file was made available to me only recently. There are errors in salary amounts which show conflicting figures between TRS and the College. It is extremely difficult to straighten out problems when no information is made available or misinformation is made available. Although your payroll records are unavailable because of flood damage, I am certain that you have payroll information records which have not been flood damaged and which would assist in many of the problems I am facing.

The problems are many, too many to be described in detail in writing. It is unconscionable to cause me to expend over 14 years in TRS to attempt to straighten out my years of service and to not even provide the name of a pension system when the problems persist even beyond the 14 years.

Since you do not want to respond to the problems which I have presented over and over again, it would be appreciated if the College would at least respond to the deferral issue and I will proceed with the other matters on a different level.

Sincerely yours,

Alan Chasanow

NEW YORK CITY TECHNICAL COLLEGE
OF THE CITY UNIVERSITY OF NEW YORK
300 Jay Street, Brooklyn, N.Y. 11201 · 643-4900

January 12, 1984

Professor Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Dear Professor Clissuras:

I have reviewed the correspondence between us during the last several months and will in this letter attempt to respond to your concerns stated in your last letter, dated November 30, 1983. Please understand we have not withheld any information regarding your service at the college and would have no conceivable purpose to do so.

You appear to be primarily concerned with whether your current retirement allowance is correct. Retirement benefits are based in the main on years of service and final salary. Those figures have been given to you. Clearly your annual salary in the intervening years of your service at the college is not crucial to your retirement benefit. However, you have received W2 forms each year as well as annual statements from your retirement system. It was your responsibility to check these at the time, report any errors, and see to it that corrections were made. For example, if your contributions to the retirement system, as set forth in your monthly or bimonthly salary stubs were not correctly reflected in your annual annuity statement, you had an opportunity at the time to clarify and correct any errors.

As we have informed you the College's old payroll sheets have been rendered unavailable by flood damage. The college does have sheets from 1979 to the present. Since they reproduce illegibly, we can arrange for you to see them at a mutually convenient time; but we cannot give you or show you that which we do not have.

We believe the retirement system covering the College of Applied Arts and Sciences during the years 1951-1953, as the College was named during that time, was the New York City Employees Retirement System, (ERS) except for those persons who may have had prior membership in the TRS. We suggest a check with ERS might confirm your membership at that time and a check with TRS should reveal any transfer of funds to it from ERS.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS.
PP. 555-569

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- : Index No. 20522/85

CITY OF NEW YORK, et al., :

Defendants. :

- -x

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO CITY UNIVERSITY DEFENDANTS' MOTION TO DISMISS COMPLAINT

PREFATORY STATEMENT

Plaintiff, pro se, submits this memorandum in opposition to the motion to dismiss complaint made by defendants Board of Higher Education of the City of New York (hereinafter "Board"), City University of New York (hereinafter "CUNY"), and New York City Technical College (hereinafter "College"), (hereinafter collectively "City University Defendants"), on the grounds that the complaint states causes of action against the City University defendants and that the causes of action are not barred by any statutes of limitations.

Among the causes of action against said City University Defendants, the following are included: discrimination, conspiracy, concealment, breach of contractual and fiduciary duty, and deprivation of rights.

As a brief statement of plaintiff's action, plaintiff sets forth the following causes:

1). Plaintiff's pension was fraudulently calculated for 29 years of service instead of 34 years of service.

2). No defendant to date has stated the New York State Education Law pension plan that applies to plaintiff and that should have been used to calculate her 34-year service pension.

3). All defendants have concealed the correct pension plan.

4). Plaintiff has received five different, written calculations of her pension all of which include material errors, such as Annuity deficit, minimum accumulation amounts for one with less than 20 years of service, use of some form of the plan in Code B20, and use of percentage for outside service.

5). Plaintiff has not received an accounting of her pension moneys. Plaintiff has several versions of her 1982 moneys which show such inconsistencies as two different salary amounts, two different values for variable moneys, and different ending dates,

6). Plaintiff's prior service was not credited automatically as provided by State Law and by the rules and regulations published by the Retirement System.

7). Plaintiff was required to purchase College service as outside service.

8). No defendant revealed the rules for automatic crediting of prior service and no defendant revealed the improper requirement of purchase of City service as outside service.

9). The Pension System issued a certificate which evaluated plaintiff's service as 34 years of City service; however, the 34 years of City service were not used in the calculation of the pension.

10). CUNY certified plaintiff's service at the College as ending in 1977 after 29 years instead of in 1982 after 34 years.

11). There is evidence that plaintiff's personnel and/or payroll information was incorrectly transmitted and/or recorded, such as dates of her promotion, membership in a pension system, salary amounts, and membership numbers.

12). There are errors in plaintiff's accounts which are not addressed by defendants.

13). The Pension System and the College will not give plaintiff a copy of her records. These two records are the source of most if not all of the errors and problems and the Pension System and the College steadfastly

refuse to provide such records. Plaintiff is not in computer at the Pension System. The College will not even supply post-1979 flood undamaged records.

14). Plaintiff has not been allowed a hearing on her claims by any administrative or governmental agency to date.

15). Plaintiff has been blocked from filing with some governmental agencies.

16). No agency has shown evidence of investigations of the claims herein.

17). As to the concealments involved in the claims herein, the defendants acted in conspiracy to conceal the causes of action from plaintiff.

18). As to the deprivation of her pension benefits, plaintiff was discriminated against on the basis of sex and religion. All the teachers of whom plaintiff is aware of receiving 30-year retirement allowances are non-Christians Male colleagues were granted automatic credit for prior service.

Plaintiff's claims are set forth in detail in the complaint and the above is not intended as a full statement of all the claims and causes of action.

Plaintiff is appealing the Federal Court dismissal of the complaint. Judge Jack B. Weinstein did not indicate the basis on which he held that plaintiff's Title VII claim was untimely, among other omissions.

Plaintiff is also appealing the memorandum decision of Justice James H. Shaw, Jr., in which he dismissed the compla as against the City Defendants and the Department of Insurance as time barred by a four month Statute of Limitations. Justice Shaw does not consider the three year, six year, and continuing wrong statutues of limitations for fraud, conspiracy, concealment, discrimination, and breach of contract and fiduciary duty, in his decision.

STATEMENT OF FACTS

Plaintiff was employed as a teacher at the College from September 1, 1948, until September 1, 1982. Plaintiff received her first pension check on or about January 2, 1983, without any explanation or analysis of plaintiff's pension moneys or calculation. In response to questions about the amou on the first check, plaintiff received at various times five different explanations in writing from three of the defendants herein, one of whom is Mr. Robert Ziskind, Pension Officer at CUNY. All five versions were in the guise of the formula in Chapter B20 of the Administrative Code which plaintiff was fra lently informed was the applicable formula. All the defendants in their contacts with plaintiff concealed the correct plan and its source; plaintiff had to devote massive efforts to comprehending the Code and carrying on a dialogue with the defendants on this false basis. Plaintiff was not aware that her

pension had been calculated according to the New York State Education Law pension plan for 29 years of service, until well into 1985 when the discrete pieces of information which plaintiff acquired at various times came together in July of 1985. In July of 1985, CUNY certified plaintiff's service as 29 years of service. Prior to that piece of information, plaintiff had been trying to verify the pension calculation on the basis of her actual 34 years of service. The correct pension plan is still being concealed by all defendants.

It is inconceivable that the defendants would maintain that plaintiff's pension was calculated correctly without having to state what the pension plan is. The pension plan and its source must be revealed. Discovery in this action is a crucial proceeding.

Since raising the initial questions on the pension amount, plaintiff has been subjected to great abuse as to her person and her time. It is unconscionable to allow the defendants to not answer the questions raised in the causes of action herein. Plaintiff is being deprived of her Constitutional rights. one of which at this phase is a right to a trial by jury.

Defendants have conspired to conceal that plaintiff's pension benefits were not calculated correctly and as a result plaintiff is being deprived of substantial payroll and pension benefit amounts. They have conspired to conceal the improper process by which plaintiff's prior service was credited. They have conspired to conceal errors in plaintiff's financial records.

And, plaintiff has been deprived of her rights by all defendants by virtue of all of the foregoing.

For all of the causes of action to plaintiff's damage, plaintiff seeks judgment as set forth in the complaint as against all defendants.

POINT I

THE COMPLAINT SETS FORTH CAUSES OF ACTION IN FOUR MAJOR AREAS

As to the first cause of action, essentially the calculation of plaintiff's pension, the defendants fraudulently concealed the pension plan which should have been applied to calculate plaintiff's pension. Since the wrong pension plan was applied and the wrong years of service, plaintiff was deprived of her maximum and correct pension benefits.

The elements required for this first cause of action as to fraud, all of which elements are present herein as to all of the defendants, including the City University Defendants, are false statements including non-disclosures, knowledge of falsity including exception for fiduciary relationship, intention to induce reliance, reliance, and damage. Keeton, Prosser and Keeton on Torts, 5th Ed., pp. 728, 738 (1984).

The City University Defendants concealed the 30-year retirement allowance which plaintiff with 34 years of service should have received, concealed the rules and regulations by

which plaintiff should have been granted credit for prior service, concealed the errors in plaintiff's Statements one of which was the failure to place purchase money in plaintiff's Annuity, and other concealments.

In this action, plaintiff claims discrimination based on sex and religion since male and/or non-Christian teachers had their pensions calculated correctly. As to plaintiff, all of the defendants conspired to conceal the correct pension benefits from plaintiff. In a civil conspiracy, the essence is the damage and the averment of a conspiracy is important for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

As to the second cause of action, credit for prior service, the regulations for granting credit for plaintiff's prior service were fraudulently concealed from plaintiff and defendants conspired to conceal that plaintiff should not have been required to purchase as outside service 2-1/2 years of service for which she should have been given automatic and immediate credit since it was service in the job of entry in membership in the Retirement System.

As to the third cause of action, plaintiff's financial records, defendants concealed that the purchase money should have been placed in plaintiff's Annuity Savings Fund.

As to the second and third causes of action, the arguments made above for fraud and conspiracy with respect to the first cause of action prevail also for the second and third causes of action.

As to the fourth cause of action, the deprivation of rights, defendants deprived plaintiff of all due process and Constitutional rights relevant to the causes herein.

As to contractual and fiduciary duties to plaintiff, defendants stand in superior knowledge or expertise on pensions over plaintiff and in such position owed plaintiff correct answers on the basis of the superior knowledge and positions of trust. These duties were breached as to all of plaintiff's causes of action.

There are nine defendants united in interest in this action. The claims and issues bind the defendants together. The significance of the allegation of conspiracy is to charge that this actionable wrong was committed jointly by defendants so that acts of one are imputed to others because of their common purpose and intent. In this case, the purpose was to deprive plaintiff of knowledge of and receipt of her correct pension benefits.

POINT II

NONE OF THE CAUSES OF ACTION IS TIME BARRED: ALL OF THE STATUTES OF LIMITATIONS ARE IN PLACE

For the causes of action of conspiracy, fraud, discrimination, and breach of contractual and fiduciary obligations, the three-year, six-year, and contiruing wrong limitations are in place and have not expired as to any cause of action.

As to the Article 78 proceeding, it is inappropriate for the plaintiff's causes of action. The Article 78 is a procedural device for obtaining relief previously sought by writs of certiorari for review, mandamus, or prohibition. Such writs are not appropriate for the causes of action herein. In addition, even if an Article 78 proceeding is available, there is no basis for believing that New York courts regard this proceeding as the exclusive means for pursuing such claims. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), cert. denied, 102 S.Ct. 1631 (1982). In §7803 of the CPLR, the language used is "The only questions that may be raised. . ."

Further, as to the Article 78, "restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner. . ." Chase, Civil Litigation in New York, p. 849 (1983). In plaintiff's action, restitution for the first cause of action is upwards of $30,000.

Further, as to the Article 78, it is difficult to obtain disclosure and in plaintiff's case disclosure is vital to success on the merits. The pension plan has not been disclosed by defendants. Plaintiff's records have not been produced. And these are just two examples of the importance of disclosure in plaintiff's action.

CONCLUSIONS

As to Attorney Bohringer's Memorandum in Support of City University Defendants' Motion to Dismiss, plaintiff sets forth the following:

1). As to plaintiff's thesis of her complaint (Bohringer, Memo., p. 2), it is the wrongful calculation of the pension to deprive plaintiff of her maximum benefits and not a complaint of inadequate counseling prior to retirement which resulted in choices that plaintiff regrets. Plaintiff did not receive a 34-year service pension; this is the thesis of the complaint.

2). As to use of Ms. Bronstein's letter for argument for the motion (Bohringer Memo., pp. 6-7), what Attorney Bohringer states as to Ms. Bronstein shows clearly that Ms. Bronstein did not answer or respond to plaintiff's questions or requests. Ms. Bronstein states that in respo to plaintiff's request for payroll records, that plaintiff should have kept her W2 forms and annual statements and

reported errors. Plaintiff did all of those things. Plaintiff has her W2 and checkstub records and annual statements and reported errors. The problem is with the records of the College and the Pension System. However, they will not supply any part thereof. Ms. Bronstein makes novel excuses for not supplying records. Also on p. 6, Attorney Bohringer goes on to say that Ms. Bronstein responded to plaintiff's requests for information concerning her retirement plan for 1951-1953. Ms. Bronstein did not answer that question at all. Attorney Bohringer supplied an altered letter as proof that this question had been answered (Bohringer Aff., Ex. E.) when in fact it had not been answered. On page 5 of her Memorandum, Attorney Bohringer quotes Ms. Bronstein in which Ms. Bronstein refers to one of plaintiff's letters; however, the date of that letter was November 30, 1983, not 1982 as shown on page 5. (Bohringer Aff., Ex. E.) On page 6 of her Memorandum, Attorney Bohringer characterizes plaintiff's four areas of concern as Attorney Bohringer views them and she then concludes that they are time barred. Most if not all of the claims which Attorney Bohringer summarizes are grounded in fraud and no matter from where Attorney Bohringer begins counting for fraud as a six-year or continuing wrong the claims are not barred. Further, plaintiff's claims are not barred by the Melani consent decree as shown in IV C which provides for prosecution of claims by members of the

class at the expense of a share of the Decree moneys. Also, the pension claims have not been settled as yet. On page 8 of her Memorandum, Attorney Bohringer states that among other issues the false information on course cancellation was time barred. Contrary to what Attorney Bohringer states, that information was not given to plaintiff in error, that information was fraudulently given with intent to deceive plaintiff. Since it occurred in 1981, it is not time barred even within the six-year count. On page 8 of her Memorandum, Attorney Bohringer states that plaintiff's discrimination claim on the basis of religion is barred since it occurred prior to retirement on September 1, 1982. The discriminatory fraud occurred with the first check. Plaintiff did not become aware of the discriminatory fraud until long after receipt of the first check. The first colleague from whom she discovered the discrimination informed her of this considerably after the time of the first check. Plaintiff had no knowledge of a 30-year retirement allowance until she was made aware by a colleague after retirement.

For the sake of brevity, plaintiff sets forth the above counter-arguments to statements made by Attorney Bohringer in her Memorandum. They do not by any means constitute a complete list.

The City University Defendants have conspired to deprive plaintiff of her maximum and correct pension benefits. Plaintiff is still being deprived of those benefits. As late as July, 1985, CUNY fraudulently stated plaintiff's service as 29 years instead of 34. (See Exhibit R attached hereto.)

Plaintiff has not been able to retain an attorney and no administrative or governmental agency has granted plaintiff a hearing or investigated plaintiff's claims or there is no evidence of such investigation. Should not Robert Abrams as Attorney General of the State of New York have investigated the claims in plaintiff's complaint? Attorney Bohringer in her Exhibits which were attached to the Affidavit in Support of Department of Insurance's Motion to Dismiss Complaint simply omitted the presentation of plaintiff's case to the State Department of Insurance. The State Department of Insurance never responded to that presentation and has not shown any evidence of an investigation. Plaintiff is now paying for the defendants' attorney (general) through her State taxes and plaintiff does not have the protection of legal representation or governmental agencies or the courts. It is almost impossible for plaintiff to obtain even procedural information from the courts. Finally, by dismissing the complaint, the Courts are now systematically depriving plaintiff of a Constitutional right to a trial by jury of the facts which are in dispute herein. This right is inviolate.

WHEREFORE, for all of the reasons set forth herein, and in greater detail in the complaint, this Court should deny City University defendants' motion to dismiss the complaint and order a trial by jury of the facts in dispute as Constitutionally protected.

Dated, December 12, 1985.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff in Person

TO: ATTORNEYS

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for City University Defendants and Insurance Department

FREDERICK A. O. SCHWARZ, JR., ESQ.
Corporation Counsel of the City of New York
Attorney for City Defendants

D. NICHOLAS RUSSO, ESQ.
Attorney for Defendant Professional Staff Congress/CUNY

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant Lewis Rosenberg

The City University Of New York
535 East 80 Street, New York, N.Y. 10021

PLAINTIFF'S EXHIBIT R. MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

MELANI v. BHE - SUBCLASS II
CLAIM DECISION

Name: CLISSURAS , ALICE

Address: 215 ADAMS ST

BROOKLYN NY 11201

Social Security #: 104-20-9440

In accordance with Section X of the Final Consent Decree in Melani v. BHE, United States District Court, Southern District of New York (73 Civ. 5434 (LPG)), your claim has been reviewed by the University. The University has decided not to contest part of your claim in this proceeding. In making this decision, the University does not admit to the validity of any claims made regarding sex discrimination.

You have been awarded the following points:

CLAIMS MADE	POINTS
Promotion or appointment to a higher title	0
Salary (7 years)	7
Total	7

The actual amount of your award will be determined after all Subclass II claims have been decided. Under the terms of the Decree, the total number of points that all claimants have been awarded shall be divided into the $1,700,000 fund to determine the dollar value of each point. Each claimant's share shall be the product of the number of points that she has been awarded multiplied by the per point dollar value.

DEFENDANT UNION, NOTICE OF MOTION TO DISMISS, PP. 571-572

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG

Defendants.

Index No. 20522/85

NOTICE OF MOTION

- x

PLEASE TAKE NOTICE that upon the annexed affirmation of D. Nichola Russo, Esq., together with the exhibits attached thereto, and the affidavit of Ms. Beryl Weinberg, together with the attached exhibi and the accompanying memorandum of law, defendant Professional Sta Congress/CUNY will move this Court, at a Special Term, Part I, at the New York Supreme Court, County of Kings, Civic Center, Brookly New York 11201, at 9:30 a.m. on the 20th of December, 1985, or as soon thereafter as counsel can be heard, for an order pursuant to CPLR §§3211(a)(5) and 3211(a)(7), dismissing the complaint on the grounds that the action is barred by the applicable statute of limitations and that the complaint fails to state a cause of act and, alternatively, under CPLR §3212 for summary judgment.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering affidavits, if any, must be served upon the undersigned

at least two days before the time at which the motion is noticed to be heard.

Dated: New York, New York
10 December 1985

Yours, etc.

D. NICHOLAS RUSSO,
Attorney and Director, Legal Affairs for
Defendant Professional Staff Congress/CUNY
25 West 43 Street
New York, New York 10036
(212) 354-1252

TO: ALICE CLISSURAS, Plaintiff pro se
215 Adams Street
Brooklyn, New York

ROBERT ABRAMS, Attorney General
State of New York
Attorney for City University Defendants and Defendant N.Y.S. Department of Insurance
Two World Trade Center
New York, New York 10047
Attention: Sue Barnett Bohringer

FREDERICK A.O. SCHWARTZ, Jr. Corporation Counsel
City of New York
Attorney for Defendants City of New York, Teachers' Retirement Board and Teachers' Retirement System of the City of New York
100 Church Street, Room 6E6
New York, New York 10007
Attention: Suzanne Lank

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant Rosenberg
420 Lexington Avenue
New York, New York 10170
Attention: Ann Teresa McIntyre

RUSSO, AFFIRMATION IN SUPPORT, PP. 573-577

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT -- BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG

Defendants.

- x

Index No. 20522/85

Attorney's Affirmati In Support of Defendant PSC's Motion to Dismiss the Complaint or, alternatively, for Summary Judgment.

D. NICHOLAS RUSSO, an attorney at law duly admitted to practice in the Courts of the State of New York, under the penalty of perjury, affirms:

1. I am the attorney and Director of Legal Affairs of the defendant Professional Staff Congress/CUNY (hereafter "PSC"), which is the unincorporated collective bargaining agent of the instructional staff at the City University of New York. I make this affirmation in support of the PSC's Motion to Dismiss or, alternatively, for Summary Judgment.

2. I have served as the PSC's attorney and Director of Legal Affairs for ten years, and I am fully familiar with the facts and statements herein.

3. The plaintiff, Alice Clissuras, commenced this action with respect to the unincorporated labor union, defendant PSC, on October 29, 1985, by the personal service of the summons and complaint upon the union's First Vice President Howard Jones. I was a witness to this service. No prior service of process on the union was ever made.

4. Assuming arguendo any of plaintiff's allegations vis-a-vis the PSC to be viable -- a position we vigorously dispute -- plaintiff's actions against the union accrued either prior to her September 1, 1982 retirement date when she met with the PSC's "pension counselor" or, at the latest between January and April of 1983, when the PSC referred the plaintiff to an outside counsel, defendant Lewis Rosenberg, whom the union had retained to pursue any viable claim against the Teachers' Retirement System that plaintiff may have had. (See the accompanying affidavit of Ms. Beryl Weinberg regarding the date of retaining outside counsel for Ms. Clissuras).

5. For reasons set forth in the accompanying Memorandum of Law, the statute of limitations for a suit against a union is at most six months. Since the plaintiff did not commence her action against the PSC within that period, the Motion to Dismiss should be granted.

6. For reasons more fully set forth in the accompanying Memorandum of Law, the Motion to Dismiss should be granted because plaintiff has failed to state a cause of action. While the plaintiff nowhere in her complaint alleges that the defendant PSC breached its duty of fair representation to her, this allegation can be inferred. But there has been no breach by the defendant PSC of its duty of fair representation to the Plaintiff. A union's duty of fair representation exists solely between the employee and the employer. Annexed hereto as Exhibit 1 is a copy of the collective bargaining agreement covering 9-1-80 and 8-31-82 between defendant PSC and the university/employer City University of New York. In the instant case, plaintiff's underlying complaint -- that the amount of her pension benefit has been calculated too low --

is a charge against the pension system, which is an entity separate and distinct from the employer/university; and, for reasons more fully explained in the accompanying Memorandum of Law, retirement benefits were a subject about which the union and the employer were specifically prohibited by law from negotiating.

7. The alternative relief sought, Summary Judgment, should be granted because the defendant union discharged any responsibility it may have had by retaining outside counsel to pursue any meritorious claim that plaintiff may have had. If any negligence occurred -- not an allegation, however, being asserted here -- it was done by an outside contractor, the lawfirm, and not by employees or agents of defendant PSC.

A copy of the plaintiff's complaint is annexed hereto as Exhibit 2.

WHEREFORE, for the reasons stated above and those set forth in the accompanying affidavit of Beryl Weinberg, the Motion of defendant PSC to Dismiss the Complaint or, alternatively, for Summary Judgment should be granted, together with costs and disbursements, and such other further and appropriate relief that this Court may deem proper.

D. Nicholas Russo

Dated: New York, New York
6 December 1985

WEINBERG, AFFIDAVIT IN SUPPORT, PP. 578-582

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG

Defendants.

- x

Index No. 20522/85

Affidavit In Support of Defendant PSC's Motion to Dismiss the Complaint or, alternatively, for Summary Judgment

State of New York)
County of New York) ss.:

BERYL WEINBERG, being duly sworn, deposes and says:

1. I make this affidavit in support of the Motion of the defendant Professional Staff Congress/CUNY (hereafter "PSC") to Dismiss the Complaint or, alternatively, for Summary Judgment, and I am fully familiar with the facts herein.

2. Until June, 1983, I was employed by the PSC, which is the unincorporated collective bargaining agent for the instructional staff at the City University of New York, in the title of Director of Staff Relations. I served in that capacity for approximately 14 years.

3. Among my various responsibilities as Director of Staff Relations, only one was relevant to the instant case: As a courtesy and service to our constituents who were about to retire -- above and beyond the union's collective bargaining duties vis-a-vis the employer/university -- I would meet with them, individually, to discuss their projected pension benefits, based upon their age and number of years of service.

4. There were three pension systems, independent of each other and completely distinct from the union and the employer/university, in any one of which the CUNY instructional staff members might be enrolled.

One such system was the New York City Teachers' Retirement System; the second was the New York City Employees Retirement System; and the third was the Teachers' Insurance Annuity Association. Each of these systems additionally covered employees of institutions OTHER THAN The City University of New York; and each had its own rules and requirements.

5. To the extent that I was familiar with the rules and requirements of each system, I would try to lay the groundwork for individual members contemplating retirement.

I never gave exact projections of retirement benefits because I never had access to the employment data maintained either by the employer/university or by the respective retirement system. My projections were, nevertheless, usually within 5-10% of what the benefit would ultimately turn out to be.

6. I met with the plaintiff, Alice Clissuras, as I had met with countless others, to discuss such matters prior to her retirement, which occurred as of September 1, 1982.

7. I last met with the plaintiff sometime between January 2nd or 3rd, 1983 -- the date plaintiff received her first pension check -- and on or before February 2, 1983, which was the date of my letter to plaintiff indicating that the union had retained the lawfirm of Shapiro, Shiff, Beilly, Rosenberg and Fox regarding any possible legal claim she might have had

against the Teachers' Retirement System.
(A copy of that letter is annexed hereto as Exhibit 3).

8. I, on behalf of the PSC and with the concurrence of the union's executive director, sent plaintiff to outside counsel NOT because I believed she had a meritorious claim but after it became obvious to me that plaintiff would never be satisfied with my answers or those provided by the pension system. To protect itself, therefore, the union was willing to retain outside counsel, to wit defendant Lewis Rosenberg, to render a professional judgment. If it proved that plaintiff had a meritorious claim that defendant Rosenberg judged should be pursued, the PSC would, indeed, have paid for such a lawsuit, as it had done for other constituents from time to time.

9. While plaintiff apparently became dissatisfied with the professional opinion of outside counsel, i.e., defendant Rosenberg, the union accepted defendant Rosenberg's appraisal of the situation, having been consistently satisfied with Mr. Rosenberg's past advice and service rendered both to the union and to other constituents. Accordingly, in or about April of 1983,

the PSC decided that it would no longer indulge the plaintiff's unfounded suspicions.

10. With respect to plaintiff's allegation in paragraph 20C of the Complaint that I concealed the "... 30-year benefit ..." from plaintiff: The so-called 30-year rule only applied to someone with 30 or more years of service AND who would not yet have attained the age of 55 at retirement. Since plaintiff had informed me that she would, indeed, have attained age 55 by her retirement date, I did not discuss the 30-year rule with her, as I had likewise not discussed with her other irrelevancies.

WHEREFORE, for the reasons stated above and those in the accompanying attorney's affirmation of D. Nicholas Russo, the Motion of defendant PSC to Dismiss the Complaint or, alternatively, for Summary Judgment should be granted, together with costs and disbursements, and such other further and appropriate relief that this Court may deem proper.

Beryl Weinberg

Sworn to before me and
subscribed in my presence
this 9th day of December, 1985

Notary Public

Joyce E. Barrett
Notary Public, State of New York
NO. 31-4847051
Qualified in New York County
My Commission Expires March 30, 1987

RUSSO, EXHIBIT 1, AFFIRMATION IN SUPPORT

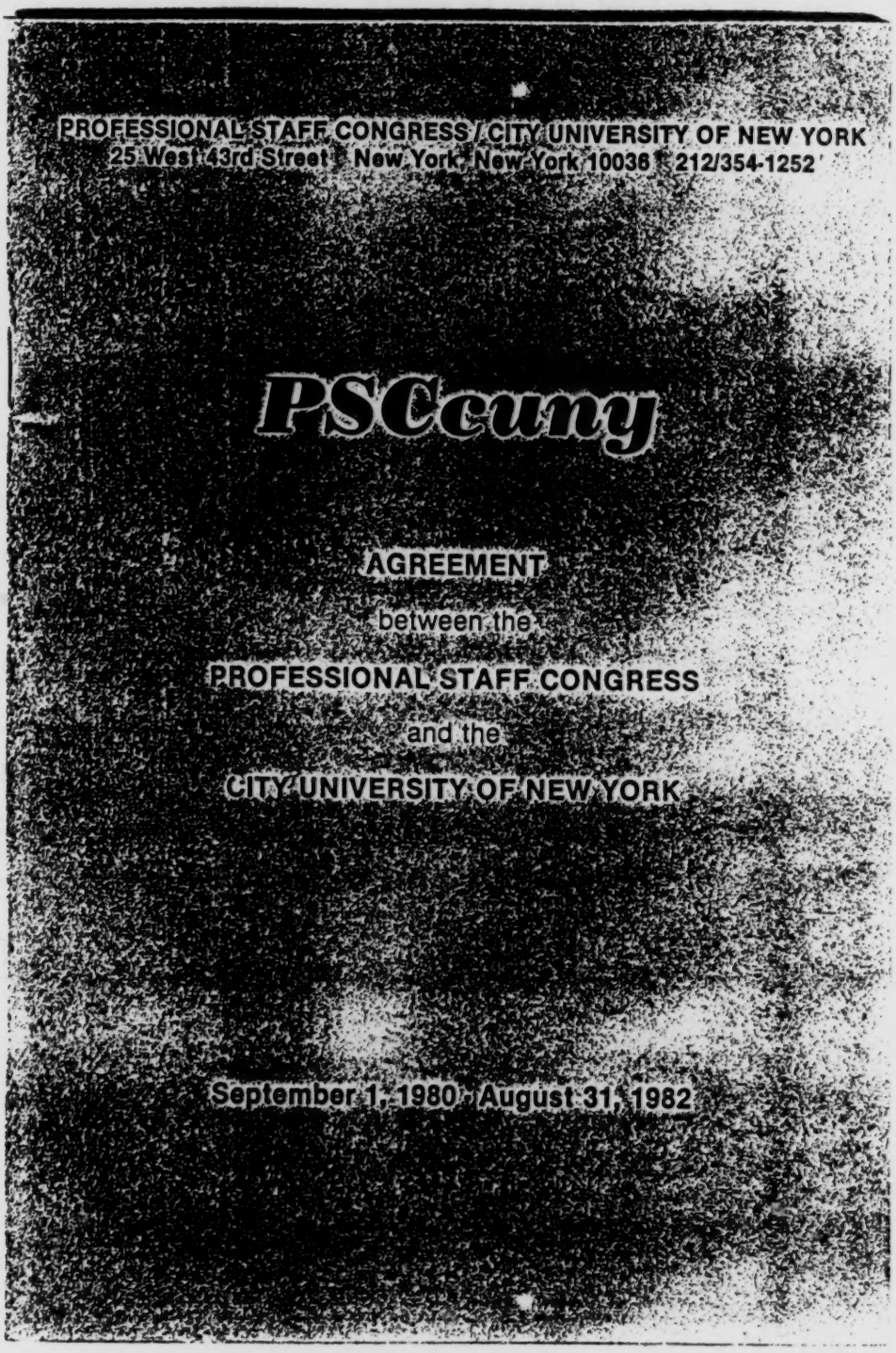

Exhibit 1

ATTORNEY'S AFFIRMATION FOR DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY IN SUPPORT OF MOTION TO DISMISS COMPLAINT

EXHIBIT 2: SUPREME COURT ALIAS SUMMONS AND COMPLAINT

(THE SUMMONS AND COMPLAINT HAVE BEEN OMITTED HERE SINCE THE SUMMONS AND COMPLAINT FOUND HEREIN ON PP. 67-101 were re-served.)

WEINBERG, EXHIBIT 3, AFFIDAVIT IN SUPPORT

PSCongress / Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

OFFICERS
Irwin H. Polishook
President
Claudia Campbell
First Vice President
Christine Cheney
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Marion Sterling
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STAFF
Arnold Cantor
Executive Director
Aaron Alexander
Associate Executive Director
Chris Kehoe
Staff Coordinator
Daniel Kaminker
Director, Contract Administration & University-wide Grievance Counselor
Mary Pearce
Coordinator, Membership Development
D. Nicholas Russo
Director, Legal Affairs
Carol Sims
Associate Director, Communications
Beryl Weinberg
Director, Staff Relations
Charlene Gilbert Weiss
Senior Researcher & Senior Projects

February 2, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

This is to inform you that the Professional Staff Congress/ CUNY has decided to support a legal action for you against the New York City Teachers Retirement System in order to gain the information you desire and to correct any errors that have been made in your calculations.

We have retained the firm Shapiro, Shiff, Beilly, Rosenberg and Fox to represent you in this matter. You should contact Louis Rosenberg, Esq. His office is located at 225 Broadway, New York, New York, 10007. Please call Mr. Rosenberg at 267-9020 for an appointment at your earliest convenience.

I trust you find this satisfactory.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
cc: Louis Rosenberg, Esq.

Exhibit 3

DEFENDANT UNION, MEMORANDUM IN SUPPORT, PP. 586-597

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, : Index No. 20522/85

Plaintiff, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG :

Defendants. :

- x

MEMORANDUM OF LAW
OF DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY
IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT
OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

This memorandum of law is submitted by the defendant Professional Staff Congress/CUNY (hereafter "PSC") in support of its Motion to Dismiss the Complaint or, alternatively, for Summary Judgment.

The Motion to Dismiss the Complaint is brought under CPLR §3211(a)5, on the ground that this action was not commenced within the applicable statute of limitations, and CPLR §3211(a)7, because the complaint fails to state a cause of action against defendant PSC.

The alternative relief sought -- Summary Judgment -- is brought under CPLR §3212. The grounds for this aspect of the motion are that the defendant PSC breached no duty owed to plaintiff, that PSC discharged any responsibility it may have had by retaining competent outside counsel (another defendant in the within action, to wit Lewis Rosenberg) to evaluate and pursue, if meritorious, claims that plaintiff may have had against the pension system (another defendant in the within action, to wit the New York City Teachers' Retirement System); if any negligence vis-a-vis plaintiff occurred -- a position NOT asserted here by PSC -- such negligence was performed by defendant Rosenberg, a member of an outside lawfirm, and not by defendant PSC.

STATEMENT OF FACTS

Plaintiff retired as a member of the faculty of New York City Technical College of the City University of New York as of September 1, 1982.

At all times relevant to this proceeding, defendant PSC was the unincorporated certified collective bargaining agent (union) of the instructional staff at the City University of New York (hereafter "CUNY") of which New York City Technical College was one constituent college. CUNY was a public institution created pursuant to Article 125, §6201 et seq., of the New York State Education Law. Inasmuch as plaintiff held the title of professor, she was a member of the PSC bargaining unit and thereby was covered by the terms of the union contract, which is annexed as Exhibit 1 to the affirmation of D. Nicholas Russo, Esq., in support of this motion.

As Article 27, §27.1, of that union contract implied (see page 42 of Exhibit 1 annexed to defendant PSC's moving papers) and as Article 12, §470 of the New York State Retirement and Social Security Law made amply clear, the union, PSC, and the public employer, CUNY, were prohibited by law from negotiating about matters of pension.

The New York City Teachers' Retirement System (hereafter "TRS", which plaintiff maintains in the instant action miscalculated her pension entitlement and from which allegation flows her complaints against defendant PSC, was the public retirement system established pursuant to Title B of Chapter 20 of the Administrative Code of the City of New York.

Plaintiff met with defendant PSC's Director of Staff Relations Beryl Weinberg prior to plaintiff's retirement on September 1, 1982. PSC's Ms. Weinberg provided plaintiff with the same consultation that she had provided to other bargaining unit members contemplating retirement, regarding a projection of what her pension would be based upon plaintiff's age and length of creditable service.

After plaintiff commenced receiving payment of her pension benefits on or about January 2, 1983 (¶14 of plaintiff's complaint), she again met with defendant PSC's Ms. Weinberg.

PSC's Ms. Weinberg, after receiving permission from the union's executive director, retained outside legal counsel.

to wit defendant Lewis Rosenberg, who was to meet with the plaintiff and, if he deemed her allegations legally actionable, to institute a suit for which the PSC would assume the legal fees.

When plaintiff became dissatisfied with the professional judgment of defendant Rosenberg in or about April of 1983, defendant PSC decided it would no longer entertain plaintiff's unfounded suspicions regarding her pension allotment, and PSC refused to deal with her further on this matter.

ARGUMENT

POINT I

PLAINTIFF's ACTION IS BARRED BY THE STATUTE OF LIMITATIONS

If plaintiff stated a cause of action -- a matter challenged by defendant PSC in Point II, infra -- and if summary judgment is not granted (in accordance with the reasons set forth in Point III, infra), then plaintiff's action is barred by the statute of limitations.

In June, 1983, the United States Supreme Court in Del Costello v. Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476, held that the six-month limitation period governs cases against a union based on the union's alleged breach of the duty of fair representation. In so holding, the Supreme Court found applicable the six-month statute of limitations found in Section 10(b) of the National Labor Relations Act, (29 U.S.C. §160(b)) with respect to a private sector duty of fair representation charge before the National Labor Relations Board.

Since the Del Costello decision was handed down, the New York State Courts have consistently relied upon that case and applied the six-month statute of limitations to suits against labor unions. See: Alexander v. Mt. Sinai Medical Center, 96 A.D.2d 488, 465 N.Y.S.2d 201 (1st Dept., 1983); Lohier v. District 1199, 96 A.D. 2d 884, 466 N.Y.S.2d 39 (2nd Dept., 1983); Taylor v. St. John's Episcopal Hospital, 96 A.D.2d 886, 466 N.Y.S. 2d 43 (2nd Dept., 1983); Gerber v. Amalgamated Transit Union, 124 Misc.2d 306, 476 N.Y.S.2d 728 (Sup., Onondaga, 1984); and Callens v. Simmons Machine Tool Corp., 488 N.Y.S.2d 282 (3rd Dept., 1985).

Of particular significance is the case of Mohan v. United University Professions, 127 Misc.2d 118, 485 N.Y.S. 2d 404 (Sup., Chautauqua, 1984), because there the Court applied Del Costello to a suit brought by a professor of the State University of New York (a public university like the City University of New York) against his faculty union (an affiliate of defendant PSC).

Defendant PSC submits, however, that the more appropriate filing period is four months, not six months.

The analogous provision of state law to the federal law's §10(b) of the National Labor Relations Act (which provides the six-month filing period) is the rule of the New York State Public Employment Relations Board ("PERB") that sets down the four-month filing period for improper practice charges filed before it, to wit 5NYCRR, §204.1(a)(1).

The argument for a four-month filing period is made all the more compelling by the fact that the Supreme Court recognized the desirability of having the same statute of limitations period for suits brought against both the employer and the union, as here. Since, under Article 78 of the CPLR, suits against public employers -- as is the City University of New York -- must be commenced within four months and since the PERB filing period is likewise four months, the more appropriate filing period in the instant case should be deemed to have been four months.

In either event, the defendant PSC's Motion to Dismiss must be granted because plaintiff did not commence her action until well beyond either the four-month or six-month statutory period.

POINT II

PLAINTIFF FAILS TO STATE A
CAUSE OF ACTION AGAINST DEFENDANT PSC

It is black letter labor law that a union owes a duty of fair representation to its bargaining unit members and that duty exists by virtue o' the union's exclusive representation of those employees. Substantively, the duty applies both to a union's negotiation of new contract terms and to its enforcement of existing contract terms. It is a duty, however, that exists only by reference to the employer. For the union exists solely to negotiate about and enforce agreements with the employer regarding terms and conditions of employment.

In the public sector involving employees of public employers (as is the City University of New York by virtue of §6201 et seq of the New York State Education Law), that which is bargainable by or off limits to the parties is sometimes set forth in law. Pertinent to the instant case, for example, §470 of the New York State Retirement and Social Security Law prohibited public employers from negotiating about retirement benefits with public employees; this proscription included the time period between plaintiff's visit to PSC's Ms. Weinberg prior to plaintiff's retirement

and through and beyond the time when defendant PSC retained outside counsel, defendant Rosenberg, to examine the merits of plaintiff's discontent over the amount of her pension entitlement.

Since the New York City Teachers' Retirement System was a separate, legally constituted entity (estabilised pursuant to Title B of Chapter 20 of the New York City Administrative Code) and since plaintiff's employer, CUNY, and union, PSC, were prohibited from negotiating about pensions, the defendant PSC owed no duty to plaintiff regarding any allegations of miscalculation, which is the underlying gravamen of her complaint.

Therefore, since defendant PSC's fair representation duty to plaintiff flowed only in the direction of the employer/university, regarding the terms of their collective bargaining agreement, plaintiff has asserted no viable action against defendant PSC, regarding possible miscalculations of pension entitlements made by the independent public retirement system, TRS.

POINT III

SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANT PSC

Even if defendant PSC owed a duty to plaintiff regarding the latter's allegation of a miscalculation of her pension entitlement, not by the employer/university but rather by the separate public pension system, then defendant PSC discharged that duty by retaining outside counsel to evaluate and pursue, if appropriate, the merits of plaintiff's dissatisfaction with her pension entitlement.

If the lawfirm or lawyer defendant thereof committed any negligence -- not an allegation asserted here -- defendant PSC is not responsible as a matter of law because the said lawfirm and lawyer were not agents or employees of the defendant PSC but rather were in the nature of an independent contractor.

Therefore, since defendant PSC went above and beyond its duty and retained outside legal counsel for plaintiff and since defendant PSC could not be held culpable as a matter of law for any negligent act of said outside counsel, the relief requested, Summary Judgment, should be granted in favor of defendant PSC.

CONCLUSION

For the foregoing reasons, the defendant PSC's Motion to Dismiss or, in the alternative, for Summary Judgment should be granted, together with costs and disbursements, and such other relief as this Court may deem proper.

Respectfully submitted,

D. NICHOLAS RUSSO
Attorney and Director of Legal Affairs
Defendant Professional Staff Congress
25 West 43rd Street
New York, New York 10036
(212) 354-1252

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS.
PP. 598-607

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, : Index No. 20522/85

Defendants. :

- -x

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO MOTION OF DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY TO DISMISS THE COMPLAINT

STATE OF NEW YORK)
ss.:
COUNTY OF KINGS)

ALICE CLISSURAS, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action, and I am representing myself in this action, to my disadvantage, due to the unwillingness of attorneys to represent me. I have

made extensive efforts to retain an attorney which include meeting with over 30 attorneys, approaching the President of the Bar Association and the New York County Lawyers' Association for referrals, and contacting several law schools, all to no avail.

2. This affidavit is made in opposition to the motion to dismiss the complaint made by defendant Professional Staff Congress/CUNY (hereinafter "PSC"), on the grounds that the complaint states causes of action against defendant PSC, that the causes of action are not barred by any statutes of limitations, and that, therefore, there is no alternative basis for summary judgment.

3. Plaintiff was employed at New York City Technical College (hereinafter "College") for 34 continuous years from September 1, 1948, to September 1, 1982. Plaintiff's pension was calculated for 29 years of service and not for 34 years of service as it should have been calculated. The use of 29 years is fraudulent. In addition, the use of the 29 years was concealed from plaintiff by each and every defendant, including the PSC.

4. Prior to retirement, plaintiff went to defendant Teachers' Retirement System of the City of New York (hereinafter "Pension System") to acquire pension information and answers to questions. The Pension System told plaintiff to go to her union for this and the Pension System did not respond to any request for information. Plaintiff then made an appointment to meet wi

the Pension Officer of the PSC, Ms. Beryl Weinberg. Ms. Weinberg met with plaintiff and gave her a version of her pension calculation which was in the semblance of the pension plan in the Administrative Code of the City of New York, Chapter 20. Plaintiff was not aware of the Code at the time of her meeting with Ms. Weinberg who at no time revealed the source of the plan she was using. After retirement, when plaintiff received her first check, plaintiff asked questions of the Retirement System to account for the difference in the amount as calculated by the Pension System and by the PSC. At that point the Pension System informed plaintiff that the pension formula used to calculate her pension was in the Code. Plaintiff was told this by the fiduciary Pension System and the PSC perpetuated this by showing the calculations in the semblance of the §B20-41.2 formula of the Code. The pension plan which prevails for City University of New York (hereinafter "CUNY") is in the New York State Education Law. All defendants, including the PSC, have concealed the correct pension plan from plaintiff and all defendants have not revealed it to date. Thus, from January, 1983, forward plaintiff expended considerable time and effort to read and comprehend Code B20 since not one of the defendants would answer any questions and since plaintiff was led to believe by fiduciaries that the plan was in the Code. Since plaintiff was constantly misled by the defendants in this action, including the PSC, it took plaintiff from January, 1983, to August, 1985, to discover the

information she has as to the causes of action. In July of 198 she received mail from CUNY which showed that defendant CUNY certified plaintiff's service as ending in 1977 instead of 1982 and thus plaintiff was able to use the figures she had discovered to that point to arrive at the pension amount she ha been given. Plaintiff did not have sufficient information up t that point to know what the causes of action were. All of the defendants had concealed and are still concealing the causes of action.

5. As to the causes of action and defendant PSC, the correspondence between plaintiff and the PSC evidences the concealment of the causes of action and the lack of response to th plaintiff's pension problems. The correspondence is attached hereto in chronological order as "Exhibit H." The sequence of events and correspondence is as follows:

a. When plaintiff met with Ms. Weinberg prior to retirement, she was given very limited and defective information. The first page in Exhibit H is the form on which Ms. Weinberg made her calculation of plaintiff's pension. The ITHP pension on that sheet was calculated on the basis of plaintiff's 1980 ITHP since later Statements had not been received at the time of this meeting. According to the Pension System another $7,000 was added to ITHP by September, 1982; thus, there would have been an addition to the ITHP pension figure. As shown on the form, no amount was added for Annuity. Then, at the end Ms. Weinberg said that as to her figures there would be a minus of a small amount which she did not explain but which she indicated on the form as a minus of $868. She did not indicate that her figures might be 5-10% off. Further, it took plaintiff until 1985 to find out that the actual pension plan which applied to plaintiff had been concealed by Ms. Weinberg.

b. After retirement, plaintiff received her first check with no analysis and no accounting of her pension moneys. When she raised questions about this with the Pension System, she was given a very skimpy Report of Actuary which no one at the Pension System would explain. Plaintiff had been trying to meet with the Pension Officer of CUNY, Mr. Robert Ziskind, without success; he did agree to meet with her after retirement on January 27, 1983. When Mr. Ziskind examined the Report of Actuary and the Pension System's Certificate of Service, certifying plaintiff's service as 34 years of New York City Service, he told her that in the face of the Certificate the PSC should request a change in the amount of the pension and if this was not done then the PSC should use a lawyer to effect such change. That same afternoon, the afternoon of January 27, 1983, plaintiff met with Ms. Weinberg and detailed her areas of concern. Ms. Weinberg responded that she would try to get the Pension System to make the needed changes and that she would get back to plaintiff the following week. The following week, she sent plaintiff a letter informing her that the PSC would support a legal action and that the firm of Shapiro, Shiff, Beilly, Rosenberg, and Fox had been retained to get pension information and to correct errors in the calculation. The Report of Actuary, the Certificate of Service, and the February 2, 1983, letter retaining Attorney Rosenberg are attached as part of Exhibit H hereto. Contrary to what Ms. Weinberg states in her Affidavit which is attached to the moving papers, she did not provide answers to plaintiff's questions. She has never stated the pension plan which should apply to plaintiff. She has never stated the source of the plan. She has a Union Pension Handbook which is intended as a guide to union members which neither she nor the President of the PSC, Mr. Irwin Polishook, would make available to plaintiff. Ms. Weinberg's February 2, 1983, letter retaining defendant Rosenberg, and his two letters, the first dated February 4, 1983, in which he confirms his appointment and the second dated April 5, 1983, in which he ended his representation of plaintiff, do not in any way reflect Ms. Weinberg's statements in her Affidavit, para. No. 8, that she sent plaintiff to Defendant Rosenberg because plaintiff was unwilling to accept her answers. In Mr. Rosenberg's April 5 letter of discontinuance, he indicates that plaintiff should go to another attorney and that there are short statutes of limitations that may be involved. This April 5 letter is in chronological order in Exhibit H hereto.

c. When defendant Rosenberg terminated his representation of plaintiff, plaintiff called Ms. Weinberg to so inform her. Ms. Weinberg instructed plaintiff to send Ms. Weinberg a letter in which plaintiff should detail the pension problems and indicate that defendant Rosenberg ended the representation and that Ms. Weinberg would then offer assistance to plaintiff for a hearing with the Teachers' Retirement Board of the City of New York. Plaintiff did this in a letter to Ms. Weinberg dated April 9, 1983 (attached hereto as Exhibit H, Item 7). Ms. Weinberg did not respond to this letter nor to a follow-up note (attached hereto as Exhibit H, Item 8).

d. At or about this time, Mr. Irwin Polishook, President of the PSC, had promised to send plaintiff a copy of the pension plan and copy of the Union contract which would set forth her entitlements as a Union member. This was indicated by plaintiff in her letter to Mr. Polishook dated June 17, 1983 (attached as Exhibit H, Item 9).

e. It then appears that as a result of plaintiff's June 17, 1983, letter to Mr. Polishook, Ms. Weinberg then sent a letter to plaintiff dated June 20, 1983, informing her that Ms. Weinberg was asking Mr. Bernard Goldberg, Teacher Member of the Retirement Board to review plaintiff's case (June 20 letter attached as Exhibit H, Item 10). Mr. Goldberg indicated in his June 21, 1983, letter that he would look into the errors in plaintiff's records at the Retirement System (attached as Exhibit H, Item 11). Although plaintiff contacted him to try to explain the errors in her accounts, Mr. Goldberg did not respond after this point.

f. Ms. Weinberg then sent a letter dated June 21, 19[illegible] to the effect that she could not supply a copy of the complete pension plan; she was aware that plaintiff wanted a copy of the complete pension benefits calculation, which was never revealed by the PSC. (The June 21 letter is attached as Exhibit H, Item 12.)

g. On June 24, 1983, plaintiff sent a letter to Mr. Polishook outlining the outstanding problems and seeki[illegible] assistance (attached hereto as Exhibit H, Item 13). He responded on July 26, 1983 (attached hereto as Exhibit H, Item 15), in which he stated that he was asking Mr. Arnold Cantor, Executive Director of the Union to respond to my concerns. Mr. Cantor responded within a week indicating that the union could do nothing further and he was making

this statement on the basis of a careful review of plaintiff's file. (See August 2, 1983, letter from Mr. Cantor attached as Exhibit H, Item 16.) Plaintiff sent him a letter outlining the problems and lack of response or support from the PSC (attached as Exhibit H, Item 17). Plaintiff also indicated that the Pension System had requested a letter from plaintiff itemizing the errors and plaintiff again sought the assistance of the PSC. Mr. Cantor's response to this (attached as Exhibit H, Item 18) was no attorney, no contract, no information and he hoped that plaintiff's letter to the Pension System would resolve plaintiff's concerns. The PSC offered absolutely no assistance with the letter to the Pension System, not even to offer any suggestions and certainly no information.

h. Then, from about September, 1983, the situation with defendant PSC was one in which in response to plaintiff's request to use the Union's library the PSC dismantled its library and plaintiff was informed that she should go to a law library if she wanted to see the pension plan. The Pension Officer who replaced Ms. Weinberg would not allow plaintiff on the PSC premises and was verbally insulting and abusive. She agreed to allow plaintiff to enter only if she did not speak. The PSC would not allow plaintiff to see a purchase of prior service form and would not assist with the error in pension system membership. These problems are reflected in the letters included in Exhibit H, Items 19, 20, and 21.

6. From all of the above correspondence, it is evident that defendant PSC never revealed the pension plan which applied to plaintiff. When plaintiff asked Ms. Weinberg why the Retirement System arrived at a 66% Regular Pension, when she arrived at a 73% Normal Pension, her only response was "I wonder why they gave you 66%." In her Affidavit, Ms. Weinberg indicates in her para. 10 that she did not discuss the 30-year rule since it applied only to one who has not attained the age of 55 and she referred to this as an irrelevancy. Ms. Weinberg does not give a source for her statement. She does not make reference to the

pension plan which is applicable in order to verify the non-existence of a 30-year rule. She does not explain why teachers have been advised to withdraw their retirement applications in their 29th year of service, complete their 30 years, and qualify for substantially increased pensions. The Pension System on a service purchase form has a choice of four plans: 55/30, age 65, 35 years, and 25/55. Not only does that show 30-year rule for age 55, it also shows a 35-year rule. Plaintiff was not informed of either of these two rules nor was her pension calculated for her 34 years. Plaintiff's pension was fraudulently calculated for 29 years and in the process plaintiff was discriminated against on the basis of sex and religion. The Pension System form referred to above is attached hereto as "Exhibit I."

7. Plaintiff brought to Ms. Weinberg's attention the problem of her prior service and the proper crediting there Plaintiff indicated to Ms. Weinberg that not only did she pay for City Service as outside service but the purchase money was not placed in her Annuity. At the time of so informing Ms. Weinberg, Ms. Weinberg did not reveal to plaintiff the rules f automatic credit for prior service if it is service in the job of entry in the Retirement System. Plaintiff had no knowledge of the rules until much later when again colleagues informed h of their receiving automatic credit and plaintiff then discove the rules on Pension System forms and in the State Education L (Relevant rules are attached hereto as "Exhibit J.")

Ms. Weinberg did say as to the purchase money that she would contact Mr. James Doran at the Pension System to find out why the money was not placed in plaintiff's Annuity. She never informed plaintiff of any response to this.

8. Thus, as to the first cause of action, the calculation of the pension, as set forth in plaintiff's complaint, defendant PSC concealed the correct pension plan from plaintiff, providing instead a false version. As to these allegations, the circumstances show that these actions of the PSC were done in conspiracy with the other defendants.

9. As to plaintiff's second cause of action, credit for prior service, defendant PSC concealed the rules for immediate credit of prior pension service. The improper manner in which plaintiff's prior service was credited was concealed in conspiracy with the other defendants.

10. As to the third cause of action, errors in Statements of Accounts, the PSC did not inform plaintiff on the crediting of her purchase money in her accounts.

11. As to the fourth cause of action, deprivation of rights, the PSC has never informed plaintiff of her entitlements as they are shown in Union contract.

12. Plaintiff's claims are set forth in detail in the complaint. The above is not intended as a full statement of all the claims and causes of action.

WHEREFORE, plaintiff prays that the motion for

dismissal of the complaint as to defendant Professional Staff Congress/CUNY be denied.

Dated: Brooklyn, New York, December 18, 1985.

ALICE CLISSURAS

Sworn to before me this

day of December, 1985

PLAINTIFF'S EXHIBIT H, ITEM 1, AFFIDAVIT IN OPPOSITION.

Pre-July 1, 1973

CITY UNIVERSITY OF NEW YORK
PENSION AND WELFARE BENEFITS OFFICE

TRS PLAN A CALCULATION FOR A Clissuras 000-62-3758 College MEC DOB. 9/14/42

TO RETIRE IN 9/83 AT AGE 56 AFTER 34 YEARS OF SERVICE

RETIREMENT ALLOWANCE = PENSION + ANNUITY + ITHP PENSION + TDA

NORMAL PENSION

For first 20 years = 50%* = 30.00 ✓

For 4 addit. years before 7/70 x 1.2% = 2.40 ✓

For 12 addit. years after 7/70 x 1.7% = 20.40 ✓

EST. FINAL SALARY $ 42643 x .7260 ✓ = $ 31,044.40 (NP)

Roll + METDA

(-968.)

*Assumption: That minimum accumulation is contributed by employee

ANNUITY Based on Contributions after 20 years x Annuity Factor

$ _____ x _____ = $ _____ (A)
(Annuity Factor = $ ____ per $1000)

ITHP PENSION Based on Payments after 20 years x Annuity Factor

$ 3,450.47 x .0734 = $ 2063 (ITHP)
(Annuity Factor = $ ____ per $1000)

TDA Total of all Payments x Annuity Factor

$ _____ x _____ = $ _____ (TDA)
(Annuity Factor = $ ____ per $1000)

MAXIMUM RETIREMENT ALLOWANCE (NO SURVIVOR BENEFITS)

(NP + A + ITHP + TDA) = $ _____ (MRA)

OPTION I

MRA x Option 1 Annuity Factor = Reduced Retirement Allowance

$ _____ x _____ = $ _____ (OPT I)

with guaranteed payout of Initial Reserve (below)

Initial Reserve = NP Value x Reserve Factor + AS + ITHPS + TDAS

NP $ _____ x R.F. _____ = $ _____ + AS _____ +ITHPS _____ +TDA $ _____

= Initial Reserve of $ _____ (_____)
years to payout

OPTION II Retiree's Age/Sex ____/____ Beneficiary's Age/Sex ____/____

MRA x A.F. _____ x _____ = $ _____ (OPT II)

CANNOT change Beneficiary - Beneficiary gets = $ _____

OPTION III (Same ages as in Option II above)

MRA x A.F. _____ x _____ = $ _____ (OPT III)

CANNOT change Beneficiary - Beneficiary gets 1/2 = $ _____

OPTION IV-2 Pop-Up

$ _____ (x _____) = $ _____ $ _____
(AF) (MRA)

OPTION IV-3 Pop-Up

$ _____ (x _____) = $ _____ $ _____
(AF) (MRA)

OPTION IV (Cash payment on death - minimum $1000 multiples - limited to Annuity $ + 1/2 TDAS)

Cost per $1000 = $ _____ (Reduces MRA by cost)

NOTES:

.728
.663
.065

Prepared by _____ Date _____
RS 1/70

Ex. H, Item 1

PLAINTIFF'S EXHIBIT H, ITEM 2, AFFIDAVIT IN OPPOSITION

TEACHERS' RETIREMENT SYSTEM, CITY OF NEW YORK — 40 WORTH STREET, NEW YORK, N.Y. 10013
(PLEASE RETAIN THIS COPY FOR INCOME TAX PURPOSES)

REPORT OF ACTUARY

To The Teachers' Retirement Board
of the City of New York:

12-1-1982

I hereby certify that in the event of the Service/~~Ordinary~~ Retirement on September 1, 1982
of Alice Clissuras registered as an active member No. 130358 the following regular retirement
allowance may be granted to ~~him/her~~ under the provisions of law and on the basis of the mortality tables last approved by the Retirement
Board, with four per cent compound interest, with payments to begin immediately/~~on~~

Member's Date of Birth August 23, 1926 Salary Base Used $ 42,643

FUND FROM WHICH PAYABLE	Initial Reserve	Annual Amount	Monthly Amount
Annuity Reserve Fund	$ 4,286.24	$ 310.56	$ 25.88
Regular Pension	$ 390,257.05	$ 28,273.35	$ 2,356.11
I.T.H.P. Pension	$ 35,903.78	$ 2,601.12	$ 216.76
Pension Reserve Fund No. 1*	$ 426,160.83	$ 30,874.47	
TOTAL FIXED ALLOWANCE	$ 430,447.07	$ 31,185.03	$ 2,548.75
Variable Annuity Reserve Fund	____ units	____ units	____ units
Variable Pension Reserve Fund	____ units	____ units	____ units
TOTAL VARIABLE ALLOWANCE	____ units	____ units	____ units

*Includes $ — which should be transferred from the Military Contribution Fund.

Figured by PK Date 12-1-82 Checked by [signature] Date 12-1-82

FIRST CHECK PAID 12 31 82

[signature]
CHIEF ACTUARY, RETIREMENT BOARD

SUPPLEMENTARY REPORT OF ACTUARY

On _____ 19__, the above named member filed in this office an election to have his/her allowance paid u
ne provisions of Option No. _____ and nominated _____
s beneficiary. As a result of such election the following allowances are payable in lieu of those shown above.

Joint Date of Birth _____

FUND FROM WHICH PAYABLE	ANNUAL ALLOWANCE	MONTHLY ALLOWANCE
Annuity Reserve Fund	$	$
Regular Pension	$	$
I.T.H.P. Pension	$	$
ension Reserve Fund No. 1	$	
OTAL FIXED ALLOWANCE	$	$
ariable Annuity Reserve Fund	units	units
ariable Pension Reserve Fund	units	units
OTAL VARIABLE ALLOWANCE	units	units

igured by _____ Date _____ Checked by _____ Date _____

OR INCOME TAX PURPOSES ONLY
OST OF OUTSIDE SERVICE $ 250154
ITY CONTRIBUTION PRIOR TO 1939 $ _____
EMBER'S TOTAL CONTRIBUTIONS $ _____
(CONSIDERATION PAID)

NIT VALUE AT DATE OF RETIREMENT _____

_____
CHIEF ACTUARY, RETIREMENT BOARD

STENCILED
12-29-82

FINAL DISPOSITION

At the meeting of the Teachers' Retirement Board on Jan 20, 1983 the retirement of
Alice Clissuras from active service was approved and the annual retirement
owance of $ 31,185.03 and -- units, as stated above, to be paid in monthly installments, was
thorized, with payments to begin immediately/~~on~~

The said retirement to be effective as of September 1, 1982

etirement No. 60876
73:72:72 WSL # 118770

Walter F. Sullivan
EXECUTIVE DIRECTOR, RETIREMENT BOARD

PLAINTIFF'S EXHIBIT H, ITEM 3, AFFIDAVIT IN OPPOSITION

Modified

The City of New York

TEACHERS' RETIREMENT SYSTEM

40 WORTH STREET, NEW YORK, N.Y. 10013
Telephone: 566-6676

WALLACE F. SULLIVAN,
Executive Director

DONALD S. MILLER, *Deputy Executive Director*
PATRICK J. KIERNAN, *Assistant Director*
DWIGHT R. KEARNS, *Assistant Director*

RETIREMENT BOARD

VICTOR F. CONDELLO
Chairman

BERNARD GOLDBERG
HARRISON J. GOLDIN
REUBEN W. MITCHELL
JAMES F. REGAN
ISAIAH ROBINSON
JOSEPH SHANNON

AE CLISSURAS
215 ADAMS STREET
BROOKLYN, NY 11201

T6/30358
Membership Number

AUGUST 11 1981
Date

Dear Member

For the purpose of establishing your prior service credit for all allowable New York City service rendered by you prior to the date you began to contribute to this system, the Retirement Board has evaluated your prior service claims and is sending herewith a report of its findings.

Your evaluated prior service claims amount to

20	02	01	for New York City Service rendered before	11-01-68
Years	Months	Days		(Date Your Contributions Began)

Will you carefully inspect the enclosed records, and if any service has been omitted which you think should have been included, please notify us at once.

If you agree with the findings shown on the work sheet, please sign the letter enclosed and return it at once.

If no reply is received within two weeks either accepting the findings or requesting further investigation, your prior service allowance will be presented to the Retirement Board for its approval.

A prompt reply will be mutually helpful in expediting the issuance of your prior service certificate.

Sincerely,

Signed & returned 8/16/81

Executive Director

enc.

OUR EVALUATION PARALLELS THE SERVICE CLAIMED BY YOU. HENCE NO WORKSHEET IS ENC

MEMBER'S COPY

Ex. H, Item 3

PLAINTIFF'S EXHIBIT H, ITEM 4, AFFIDAVIT IN OPPOSITION

PSCcuny | Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

OFFICERS

Irwin H. Polishook
President

Claude Campbell
First Vice President

Geraldine Chapey
Secretary

Howard Jones
Treasurer

Norman Bindler
David Burke
Gerald Grayson
Sharad Karkhanis
Belle Zeller
University-wide Officers

Irwin Yellowitz
Vice President
Senior Colleges

Alvin Bachman
Phyllis Gold Gluck
Martin Kaplan
Senior College Officers

Pearl Gasarch
Vice President
Community Colleges

Donald Davidson
Charlotte Phoenix
Katherine Stabile
Community College Officers

Harold Wilson
Vice President
Cross Campus Units

Peter Hoberman
Peter Jones
Cross Campus Officers

Susan B. Prager
Vice President
Part Time Personnel

Belle Zeller
President Emeritus

Marion Starling
Treasurer Emeritus

STAFF

Arnold Cantor
Executive Director

Aaron Alexander
Associate Executive Director

Chris Kahan
Staff Coordinator

Daniel Kaminker
Director, Contract Administration & University-wide Grievance Counselor

Mary Pearce
Coordinator, Membership Department

D. Nicholas Russo
Director, Legal Affairs

Carol Sims
Associate Director, Communications

Beryl Weinberg
Director, Staff Relations

Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

February 2, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

This is to inform you that the Professional Staff Congress/ CUNY has decided to support a legal action for you against the New York City Teachers Retirement System in order to gain the information you desire and to correct any errors that have been made in your calculations.

We have retained the firm Shapiro, Shiff, Beilly, Rosenberg and Fox to represent you in this matter. You should contact Louis Rosenberg, Esq. His office is located at 225 Broadway, New York, New York, 10007. Please call Mr. Rosenberg at 267-9020 for an appointment at your earliest convenience.

I trust you find this satisfactory.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
cc: Louis Rosenberg, Esq.

Ex. H, Item 4

PLAINTIFF'S EXHIBIT H, ITEM 5, AFFIDAVIT IN OPPOSITION

LAW OFFICES

ABRAHAM L. SHAPIRO
SIDNEY FOX
HERBERT SHIFF
STEWART L. BEILLY
LEWIS ROSENBERG*
GERALD RICHMAN**
THEODORE T. WEISER**
HAROLD D. KOZUPSKY
MORRIS S. WOLIN
RAYMOND S. PERSKO
LAWRENCE S. SIMON
RICHARD J. ROTHMAN
ERWIN B. NEWMAN
MAX GOLDBERG
DOROTHY S. VIVAS
DAVID E. DREXLER
RICHARD GROSS
STANLEY N. ALBERT***
BRIAN BROWN
BETH SHAPIRO
ROY J. KARLIN
BARRY WASHOR

SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX

225 BROADWAY

NEW YORK, N.Y. 10007

AREA CODE 212
267-9020

LESTER HOLTZMAN
COUNSEL

*ADMITTED TO MASS. BAR
**ADMITTED TO N.J. BAR
***ADMITTED TO FLORIDA BAR

February 4, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. s-10465

Dear Professor Clissuras:

I assume by the time that this letter reaches you, you will have been advised by Beryl Weinberg of Professional Staff Congress/CUNY that we are to act as your attorneys in connection with the dispute you have with the New York City Teachers Retirement System.

Because that body is a governmental agency, there are frequently controlling laws and regulations which require action to be instituted very promptly. I accordingly request that you contact me at your earliest possible convenience so as to preclude the expiration of any period of limitation concerning rights you might have.

Thank you for your cooperation.

Very truly yours,

Lewis Rosenberg/gld

LEWIS ROSENBERG

LR/gld

Ex. H, Item 5

PLAINTIFF'S EXHIBIT H, ITEM 6, AFFIDAVIT IN OPPOSITION

LAW OFFICES

ABRAHAM L. SHAPIRO
SIDNEY FOX
HERBERT SHIFF
STEWART L. BEILLY
LEWIS ROSENBERG*
GERALD RICHMAN**
THEODORE T. WEISER**
HAROLD D. KOZUPSKY
MORRIS B. WOLIN
RAYMOND S. PENNO
LAWRENCE B. SIMON
RICHARD J. ROTHMAN
ERWIN M. NEWMAN
MAX GOLDBERG
DOROTHY S. VIVAS
DAVID E. DREXLER
RICHARD GROSS
STANLEY N. ALBERT***
BRIAN BROWN
BETH SHAPIRO
ROY J. KARLIN
BARRY WASHOR

SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX

225 BROADWAY
NEW YORK, N. Y. 10007

AREA CODE 212
267-9020

LESTER HOLTZMAN
COUNSEL

*ADMITTED TO MASS. BAR
**ADMITTED TO N. J. BAR
***ADMITTED TO FLORIDA BAR

April 5, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: Clissuras v. NYCTRS
Our File No. S-10465

Dear Professor Clissuras:

I have been unsuccessful in attempting to reach you by telephone and, accordingly, am writing you this letter.

From my conversations with Richard Rothman, it is evident that you have a complete lack of confidence in the actuary, who we believe could be helpful in setting forth the facts necessary to analyze your claims for retirement benefits under the Applicable Retirement System. As you know from my advice, it is impossible to proceed in your matter without an expert opinion.

Richard Rothman also tells me that you expressed a lack of confidence in our ability to proceed with your case.

I must reluctantly conclude that it is impossible for us to continue as your attorneys. I, therefore, suggest you make other arrangements for representation in this matter. Please also be referred to our earlier advice concerning a short Statute of Limitations which may be applicable.

Very truly yours,

LEWIS ROSENBERG

LR/gld

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

cc: Beryl Weinberg

actuary told me he + Arie Schwartz are very good friends

not so. Couldn't get him on the phone

Rothman told me there was nothing in the file on my case.

Ex. H, Item 6

PLAINTIFF'S EXHIBIT H, ITEM 7, AFFIDAVIT IN OPPOSITION, PP. 614-615

215 Adams Street
Brooklyn, NY 11201
April 9, 1983

Professional Staff Congress/City University of New York
Ms. Beryl Weinberg, Director, Staff Relations
25 West 43d Street
New York, NY 10036

Dear Ms. Weinberg:

After 34 continuous years of teaching service at New York City Technical College, I retired with an effective date of September 1, 1982. Since that date I have encountered many problems and difficulties with TRS, among which I set forth the following:

Prior to receipt of first pension check, which was dated December 31, 1982, I did not receive notice of amount of pension; I did not receive a summary and/or rundown of my pension moneys (3-page statement) either before or after receipt of first pension check. The amount of my pension is not correct.

On January 17, 1983, after going to TRS to try to get an explanation of my pension check, a clerk gave me a sheet entitled "Report of Actuary" which showed three figures used to total pension allowed me. The figures are not correct and no one at TRS has as yet explained them despite numerous requests.

I cannot get a copy of my service record from TRS. I requested it on many occasions and was refused each time.

At the point of retirement, I applied for all excess money in my annuity. I requested information beforehand as to the amount of the excess in order that I might make more sound decisions regarding this. I did not receive any explanation. I have a series of correspondence which states that I was not eligible for excess because of prior application--which is not so. I did, however, receive an excess check.

At the point of entry in TRS in 1968, I should have received credit for five years of service transferred from New York State System. Since 1968, I made many attempts to realize this transfer. The problems with transfer of this service have spanned a period of over 12 years and the resolution is still a problem. However, I have a certificate from TRS which grants me 20 years of New York City service as of 1968.

Ex. H, Item 7

There are many errors in my Statements of Account. Over the years, I made many attempts to get explanations and/or corrections--to no avail. I have not received a 1982 Statement of Account nor notification of the status of the figures as of the dates of disposition.

On February 2, you wrote me a letter indicating that the PSC will support me in a legal action against the TRS and that Mr. Lewis Rosenberg was retained to represent me. On February 15, I met with Mr. Rosenberg. At the end of that meeting, I unfortunately did not have a sense of direction nor did Mr. Rosenberg communicate with me after that date. An associate of his called me March 25; however, I could not contact Mr. Rosenberg by phone since our first and only meeting. He sent me a letter on April 5 terminating his representation.

On March 30, I sent a telegram to Mr. Victor Condello in which I briefly stated my problem with TRS and in which I requested a hearing of this matter. The support of the PSC in this proposed action would be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras

when Rosenberg dropped case - Ms. Weinberg asked me to write her this letter telling me what to include & that she would support request for hearing. - She never responded to this letter

PLAINTIFF'S EXHIBIT H, ITEM 8, AFFIDAVIT IN OPPOSITION

April 27, 1983

Ms. Weinberg,

May I hear from you regarding the following:

What is progress with respect to hearing?
I have not had any response to my request.

Who is Chairman of TRS Board? Mr. Piscitelli?
or Mr. Condello?

I would appreciate a letter from the PSC which sets forth the extent and ramifications of financial support on the part of the PSC for an attorney selected by me to respresent me in the dispute I have with the TRS.

A response to the above would be appreciated at your earliest convenience. I have been having difficulty contacting you by phone. Action must be taken very soon.

Alice Cisneros

Ex. H, Item 8

PLAINTIFF'S EXHIBIT H, ITEM 9, AFFIDAVIT IN OPPOSITION

June 17, 1983

Mr. Irwin H. Polishook, President
Professional Staff Congress
25 West 43d Street
New York, NY 10036

Dear Mr. Polishook:

As I indicated to you on Tuesday, I would appreciate your forwarding to me a complete copy of the PSC contract with the City and a complete copy of the Pension Plan.

In addition, I would appreciate a statement from the PSC to indicate to me the position of the PSC in the problems I am having with respect to my pension. The basic problems are the amount of the pension and errors that require correction.

I would appreciate the support of the PSC in the resolution of these problems and I would appreciate an early response to this letter.

Sincerely yours,

Alice Clissuras

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

cc: Ms. Beryl Weinberg
Director, Staff Relations

Ex. H, Item 9

PLAINTIFF'S EXHIBIT H, ITEM 10, AFFIDAVIT IN OPPOSITION

PSCuny / Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

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Martin Kaplan
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Associate Director, Communications
Beryl Weinberg
Director, Staff Relations
Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

June 20, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

President Polishook discussed your situation with me and indicated his concern that the union provide you with all the services to which you are entitled. After I discussed the steps already taken, we agreed that the only logical step left was to submit all of your papers to Bernard Goldberg, Teacher Member of the Retirement Board and ask him to review the case and take whatever steps he considered required to resolve your questions. This was done as soon as Mr. Goldberg returned from his European trip last week.

I am sure that he will be in touch with you whenever he has reached a conclusion.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
cc: Dr. Irwin H. Polishook
Bernard Goldberg

Ex. H, Item 10

PLAINTIFF'S EXHIBIT H. ITEM 11. AFFIDAVIT IN OPPOSITION

United Federation of Teachers
Local 2, American Federation of Teachers, AFL-CIO
260 Park Avenue South
New York, N.Y. 10010
(212) 777-7500

June 21, 1983

Ms. Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Ms. Clissuras:

I will check to determine whether the errors claimed in your letter of June 15 are reflected in TRS records. The corrections you say were pencilled in by a clerk would have reflected something in the record.

Your letter did not contain copies of the check stubs for the year in question. They would be very useful if Teachers' Retirement records indicate that the statements you received were correct.

Fraternally,

Bernard Goldberg
Chairman
UFT Pension Committee

Opelu:153
BG:ks

Ex. H, Item 11

PLAINTIFF'S EXHIBIT H. ITEM 12. AFFIDAVIT IN OPPOSITION

PSCcuny | Professional Staff Congress/City University of New York
25 West 43rd Street New York, New York 10036 212/354-1252

OFFICERS
[illegible]
STAFF
[illegible]

June 21, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras,

Dr. Polishook has discussed with me your letter of June 17th of which you sent me a copy. I believe that my letter of June 20th stated our position in relation to your pension situation.

I am enclosing as you requested a copy of the PSC contract. I am afraid that I can not supply you with a complete copy of the pension plan because to the best of my knowledge, this exists only in the Administrative Code and in the State Education Law.

Sincerely,

Beryl Weinberg
Director, Staff Relations

BW:am
Enc.
cc: Irwin H. Polishook

Ex. H, Item 12

No response

PLAINTIFF'S EXHIBIT H. ITEM 13.
AFFIDAVIT IN OPPOSITION. PP. 621-622

June 24, 1983

Mr. Irwin H. Polishook, President
Professional Staff Congress
25 West 43d Street
New York, NY 10036

Dear Mr. Polishook:

An indordinate length of time has passed since the outset of my problems with TRS and at this point of time I still do not have answers to my questions and/or problems, as follows:

1. I have never received a detailed analysis of my pension and pension moneys from TRS.

2. There are many errors in my Statements of Account which require correction and have not been corrected.

3. I have not been able to get a copy of my records from TRS.

4. No one will respond to my request for a copy of the Pension Plan. Mrs. Walker showed me a copy in the form of a thin book but would not give it to me claiming that it was not an updated copy. Ms. Weinberg does not know of the existence of such a book. I will gladly pay for the cost of copying the part of the plan which involves the calculation of the Pension.

5. Problems were caused by failures to respond to questions as in the area of excess.

6. Problems were caused by omissions in pension counseling. TRS does not counsel on pensions at the point of retirement. They refer you to the Union for this. Mr. Ziskind would not meet with me at the point of retirement. He would only answer questions which were put to him on the phone.

7. I wrote to the Retirement Board of TRS requesting a hearing. I have had no response to two requests.

8. I have not received a copy of the complete Union contract.

9. I do not know the status of the PSC with respect to all of the above problems.

The PSC was informed of the major problems at the outset. I was assigned an attorney who met with me once and then did not communicate with me at all for several months at which point he sent me a letter to tell me that he was dropping the case. Attempts by me to arrange to meet with Mr. Russo have been unsuccessful. What is the status of legal representation at

Ex. H, Item 13

this point. Ms. Weinberg told me that the PSC will consider paying for an attorney selected by me but my efforts to confirm this have been unsuccessful.

Ms. Weinberg informed me that Mr. Goldberg would review my case and assist in resolving the questions. Mr. Goldberg called and informed me that he was calling "as a special favor to Ms. Weinberg" and not as a Retirement Board member. He would not meet with me; he will not consider more than one error at a time; and he will not consider errors in my Statements which do not affect the Annuity. Also, he wants me to send him my paycheck stubs. I do not understand this procedure at all.

This entire matter has reached a critical point. It is extremely important to know whether there is PSC support for me with the problems above outlined, what that support is, and when will an affirmative, decisive step be taken?

An early response to this letter will be appreciated.

Sincerely yours,

Alice Clissuras

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Copy: Ms. Beryl Weinberg
Director, Staff Relations

PLAINTIFF'S EXHIBIT H, ITEM 14, AFFIDAVIT IN OPPOSITION

215 Adams Street
Brooklyn, NY 11201
June 26, 1983

Mr. Bernard Goldberg
United Federation of Teachers
260 Park Avenue South
New York, NY 10010

Dear Mr. Goldberg:

In response to your letter of June 21, I did not send copies of my paycheck stubs because the errors in my statements affect more than one year and more than the Annuity. I will supply the paycheck stubs at any point that this becomes necessary.

I have never received from TRS a detailed analysis of my pension and pension moneys. I do not know what was used for 1982 to make the various calculations. ~~Also~~, there are years for which I have never received statements from TRS. I have requested a copy of my records at TRS--without success.

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calcula
corre

If I could get a copy of my pension moneys and service records at TRS, it would be much simpler to identify and correct the errors.

Sincerely yours,

Alice Clissuras

Alice Clissuras
875-6171

Copy of letter sent

Ex. H, Item 14

PLAINTIFF'S EXHIBIT H, ITEM 15, AFFIDAVIT IN OPPOSITION

PSCcuny | **Professional Staff Congress/City University of New York**
25 West 43rd Street New York, New York 10036 212/354-1252

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D. Nicholas Russo
Director, Legal Affairs
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Beryl Weinberg
Director, Staff Relations
Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

July 26, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:,

This is in response to your recent letters.

After your first inquiry to me I asked Ms. Beryl Weinberg to consider the problems you described and know that she has communicated with you (before and after my request) and is generally familiar with your concerns. I am also informed that Mr. Bernard Goldberg of the T.R.S. Board and legal counsel provided by the union have also contacted you and discussed your concerns with you. Other than to provide these resources inasmuch as I am not a pension expert, I believe the best available sources for information and advice are those you have already utilized.

When we met briefly late in the spring, I gave you a copy of the current Professional Staff Congress contract with the Board of Trustees of CUNY (1982-84) as well as the prior agreement with the university. In the event you misplaced the current PSC/CUNY contract, I have enclosed another copy for your use.

I have asked Mr. Arnold Cantor, Executive Director of the union, to review your communications and to respond once more to your letters. On the basis of his evaluation, he will decide whether the Professional Staff Congress is able to assist you further.

Sincerely yours,

Irwin H. Polishook

Irwin H. Polishook
President

IHP/cw
cc: Arnold Cantor
Opeiu #153
Enc. (contract)

Ex. H, Item 15

PLAINTIFF'S EXHIBIT H, ITEM 16, AFFIDAVIT IN OPPOSITION

PSCcuny | ***Professional Staff Congress/City University of New York***
25 West 43rd Street New York, New York 10036 212/354-1252

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Vice President
Senior Colleges

Alvin Bachman
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Martin Kaplan
Senior College Officers

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Chris Kahan
Staff Coordinator

Daniel Kaminker
Director, Contract Administration & University-wide Grievance Counselor

Mary Pearse
Coordinator, Membership Department

D. Nicholas Russo
Director, Legal Affairs

Carol Sims
Associate Director, Communications

Beryl Weinberg
Director, Staff Relations

Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

August 2, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:

President Polishook has asked me to respond to you once more on behalf of the Professional Staff Congress. After carefully reviewing your file and after discussing your concerns with those who have knowledge of your case and expertise regarding the pension system, I have come to the reluctant conclusion that there is nothing further the union can do to assist you in this matter. We have extended to you our available resources and advice.

Since the Professional Staff Congress does not administer your pension fund, I suggest that in the future, you communicate directly with the Teachers Retirement System concerning questions about your pension.

Sincerely,

Arnold Cantor
Executive Director

AC/cmw
cc: President I. Polishook
Opeiu #153

never ever Contacted me.
never spoke with me

Ex. H, Item 16

PLAINTIFF'S EXHIBIT H, ITEM 17, AFFIDAVIT IN OPPOSITION, PP. 626-627

215 Adams Street
Brooklyn, NY 11201
August 5, 1983

Professional Staff Congress/CUNY
Mr. Arnold Cantor, Executive Director
25 West 43d Street
New York, NY 10036

Dear Mr. Cantor:

In your letter of August 2, you indicated that the Union has extended all available resources and advice to me in my pension problems. I do not understand the specifics of this. Also, I do not understand why it would not be of value to you to discuss my concerns with me before arriving at a decision. Although I have set forth the problems to various people at the PSC in many letters, I set forth the following as an indication of the "support" of the PSC:

There is disagreement as to the amount of the pension. Ms. Weinberg gave me a worksheet with the amount of the pension and this figure is higher than the one calculated by TRS. TRS explained their figure by sending me a second set of figures.

When Ms. Weinberg was informed of the error in the calculation of the pension (and other errors), she informed me that the PSC would support a legal action for me and assigned an attorney. I met with the attorney on February 15; after that one meeting, he did not contact me until April 5 at which point he sent me a letter terminating his legal representation.

When I informed Ms. Weinberg of this, she told me to write all my concerns in a letter to her and that she would support me in setting a hearing with the TRS Board. I wrote her, as she requested, a letter dated April 9. I never received a response to this letter.

I attempted to meet with Mr. Polishook. After these attempts, Ms. Weinberg wrote me that Mr. Bernard Goldberg of the TRS Board would help me resolve my questions. Mr. Goldberg told me to send him one of the problems which I did. TRS made an error in which they understated my contributions, which error TRS admitted as an error on their part; however, although they penciled in the correct figures, corrections were never made throughout my Statements of Account. I sent one of these errors to Mr. Goldberg on June 15 and I have not received a response from him as yet.

Ex. H, Item 17

In each of the above-described instances, I was offered assistance but to no avail. I was assigned an attorney who never contacted me. I was told that I would be supported for a hearing with the TRS Board and was not so supported. I was told that I would be helped with the errors in my Statements of Accounts and have not been helped as yet.

In terms of all of the above, I would be very interested in hearing from you as to the bases on which you made your decision.

Mr. Sullivan, Executive Director of TRS, sent me a letter in which he suggested that I write him a letter itemizing all the errors which I feel have occurred and he indicated that upon receipt of such a letter he will review my file. I am in the process of writing such a letter. I will, of course, include all the errors of which I am aware. However the task is very difficult for me since I have not been able to get a copy of the Pension Plan from either the PSC or TRS. Also, I have not been able to get my records from TRS.

I cannot get a response from the PSC as to whether or not the PSC will pay for an attorney whom I select. Also, I cannot get a copy of the complete Union contract--the UFT portion. I would appreciate your assistance in these matters.

As you indicated in your letter my next step does involve direct communication with the TRS; I will send Mr. Sullivan the letter he suggested that I send him.

As a member of the PSC since its inception, I would have appreciated support or at the very least guidance with respect to my pension problems. I still do solicit PSC support.

Sincerely yours,

Alice Clissuras

PLAINTIFF'S EXHIBIT H, ITEM 18, AFFIDAVIT IN OPPOSITION

PSCcuny | ***Professional Staff Congress/City University of New York***
25 West 43rd Street New York, New York 10036 212/354-1252

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Director, Legal Affairs

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Beryl Walmberg
Director, Staff Relations

Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

August 10, 1983

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:

In answer to your August 5, 1983 letter to me let me state:

1. The PSC will not pay fo. an attorney chosen by you.

2. The attorney we assigned to your case did meet with you and felt he could not help you.

3. You have the complete contract - there is no "UFT portion" - the contract is between the City University of New York and the Professional Staff Congress.

I hope that your letter to Mr. Sullivan, Executive Director of the TRS will resolve your concerns.

Sincerely,

Arnold Cantor
Executive Director

AC/rcf

Opeiu #153

Ex. H, Item 18

PLAINTIFF'S EXHIBIT H, ITEM 19, AFFIDAVIT IN OPPOSITION, PP. 629-630

September 28, 1983

Professional Staff Congress/CUNY
Mr. Irwin H. Polishook, President
25 West 43d Street
New York, NY 10036

Dear Mr. Polishook:

With regard to my pension problems, I have received no assistance from the PSC. Ms. Weinberg identified two of the major problems--calculation of the pension and credit for prior service--but I have received no assistance from the PSC even to the extent of no advice.

I have received many letters from various people at the PSC which include such statements as "The attorney we assigned to your case did meet with you and felt he could not help you." (Mr. Cantor's letter of August 10, 1983) This is not so. Mr. Rosenberg met with me once. He did not discuss the matter with me at that point and he never contacted me again. He did not have a file on my case. I could not get a clear response from him as to Statutes of Limitation on my case.

Again, I have received no assistance from the PSC. I informed Mr. Cantor that I am at the point of writing a letter to Mr. Sullivan of the TRS according to Mr. Sullivan's suggestion. All I received from Mr. Cantor was "I hope that your letter to Mr. Sullivan * * * will resolve your concerns." I had to write that letter on the basis of my research of Code B20. You never responded to me about sending me a copy of the Pension Plan. I have never received a copy of the Pension Plan. I had to write the letter which incorporated many problems solely on the basis of my knowledge with no pension information from the PSC or TRS.

I have been a member of the PSC since its inception. There are many faculty members at the various units of CUNY who are in desperate need of assistance. Several times, I went to the Dean of Professional Staff at my College in an attempt to assist some of my colleagues. The response I received was something to the effect that my Union will not

Ex. H, Item 19

do anything for these people, why should he. It is very disconcerting to know that we now live in a society where not only do we not help people in the same Union brotherhood but we do not even assist people simply because they are in need of assistance.

I have had many problems with the College and the Pension System over the years. It took me over 12 years to obtain credit for prior service which should have been transferred automatically upon the point of entry in TRS. And this is just one of many problems. I did not contact PSC for assistance over the years. However, now when a major problem arises, I am truly amazed at the response of the PSC. I would have settled for some advice--but unfortunately none was forthcoming.

I am a member of a Pension System which has never given me a copy of the Plan. There are errors in my contributions which the Pension System has acknowledged and which they have not corrected over an inordinate period of time. Mr. Goldberg offered to help me. I sent him one of these errors as he requested and I have not heard from him since.

Ms. Weinberg in her letter of June 20, indicated that you discussed this situation with her and that you wanted the Union to provide me with all the services to which I am entitled. I do not know to what I am entitled from the PSC nor have I received any of these entitlements.

I am still hoping for some assistance.

Sincerely yours,

Alice Clissuras

Alice Clissuras
215 Adams Street
Brooklyn, NY 11201

Copy to Mr. Arnold Cantor

PLAINTIFF'S EXHIBIT H. ITEM 20. AFFIDAVIT IN OPPOSITION.
PP. 631-632

February 9, 1984

Mr. Irwin H. Polishook, President
Professional Staff Congress
25 West 43d Street
New York, NY 10036

Dear Mr. Polishook:

The problems which I have been experiencing for some time now with respect to NYCTRS, PSC and NYCTC persist and unfortunately are increasing in number. No assistance, information, or counseling has been forthcoming from the aforementioned three agencies.

Deferrals:
For some time now I have trying to get information on the payment of the deferral wages. Miss Rosado of the PSC and Miss Bronstein of NYCT both state that all that I am entitled to is two weeks of deferred salary which were deferred in 1976. I dispute that statement and have requested a copy of the pertinent parts of the contract agreement. Miss Rosado said that the PSC has nothing to show me and she referred the matter to Mr. Cantor who sent me the enclosed letter. I would like to know when and where I may see a copy of the agreement between the City and the Coalition of Municipal Employees. The UFT in their November 28, 1983 issue made available to their members detailed instructions and calculations covering all possible contingencies and problems. What has the PSC done in this matter? The deferral period was not limited to the two weeks in 1976. According to the UFT Bulle it took place from October 1, 1975 through September 8, 1978. I did not receive contract increases which were deferred. Thus, although I was at maximum during the deferral period, the contract increases were deferred and I did not receive those among other items.

Purchase of Prior Service:

For almost a year now, my sister, Patricia Clissuras, has been attempt to purchase about 2½ years of private school teaching and she has encountered many problems with respect to this from TRS. She went to se Mrs. Weiss for some assistance and what she received is the enclosed letter. My sister presented a series of problems with the purchase an Mrs. Weiss did not in her letter respond to any of them. She asked Mr Weiss for a purchase application (or at least to see one) and after first saying she would give her one then told her there was not one in the PSC offices. If reference to a purchase form had been made, the formula would not have been complicated as Mrs. Weiss states in her letter. The formula is very simply stated as a condition of the purchase. Here, again, of what help is the PSC to a member?

Ex. H, Item 2

Pension:

My TRS pension problems persist. When my sister went to see Mrs. Weiss, I accompanied her. Mrs. Weiss was very indignant about my presence on ground that I had retained an attorney. This is not so. I have been seeking legal counsel. What am I supposed to do when the people at my Union will not speak to me nor discuss the pension matters with me. My pension has not been calculated correctly among other things. Late in December, I went to the PSC in an attempt to find references in the PSC library which might help me. There were no reference materials in the library. Mrs. Weiss' secretary told me to go to a law library in response to my request to see a copy of the TRS pension plan.

I always believed that the PSC and its members were on the same side. I do not understand why we are on opposite sides and why the PSC is so defensive about talking about anything to me.

With respect to deferrals, I would appreciate knowing where I may see a copy of the agreement.

With respect to purchase of service, I have been trying to straighten out my prior service since 1968 and it still is a problem. I now see that my sister will be faced with similar problems. She would appreciate a copy of the purchase application which is numbered 73D7. May she expect the PSC to send her one?

With respect to pensions, I have informed the PSC of the problems I have encountered with the errors for over a year now with no success. At the very least, can you tell me to which pension system NYCTC faculty contributed during the years 1951-1953. NYCTC will not answer this question and I have contacted several other agencies to no avail. The College does not respond to any of my inquiries. Payroll records have been flood damaged; thus, nothing is available. They arbitrarily took 20 sick leave days from me (not from all faculty) in 1978 which was my thirtieth year of grandfathered service. They have sent letters to the TRS with incorrect promotion dates. TRS has in its records that I was not a member of a pension system 1951-1953 which is not correct. At the very least can you correct that piece for me?

Any assistance will be appreciated.

Sincerely yours,

Alice Clissuras

Copy: Mr. Arnold Cantor, Executive Director
Mrs. Clarissa Weiss, Pension Consultant

PLAINTIFF'S EXHIBIT H. ITEM 21. AFFIDAVIT IN OPPOSITION.
PP. 633-634

PSCcuny | **Professional Staff Congress/City University of New York**
25 West 43rd Street New York, New York 10036 212/354-1252

OFFICERS
Irwin H. Polishook
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Mary Pearce
Coordinator, Membership Department
D. Nicholas Russo
Director, Legal Affairs
Carol Sims
Associate Director, Communications
Beryl Weinberg
Director, Staff Relations
Clarissa Gilbert Weiss
Coordinator of Research & Special Projects

February 22, 1984

Professor Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

Dear Professor Clissuras:

Thank you for sending me a copy of your letter of February 9, 1984 to Dr. Polishook, I am responding on his behalf.

On the matter of salary deferrals, you deferred only the two weeks salary in 1976. The UFT deferral was entirely different. They deferred salary increases over a longer period of time. The members of the instructional staff at CUNY deferred only the afore mentioned two weeks plus part of an increment which did not affect you if you were at top of scale. Under the fiscal conditions which existed at that time each union was asked to make certain sacrifices through salary deferrals, but no two unions handled it the same way. Actually, the PSC deferral was the only one which involved "current" salary, and was among the smallest deferrals of all the unions. The UFT on the other hand deferred substantially more per employee.

I requested the agreement

I am enclosing the pertinent page from the deferral agreement in compliance with your request.

On the matter of the purchase of [illegible] for service, the PSC does not ordinarily stock the form you speak of. They are readily available from the TRS. However, I shall endeavor to obtain two forms for you and your sister.

never sent one

On the matter of pension calculation, as you know, we have suggested that you deal directly with the TRS because you did not accept the calculation of our specially trained staff.

We have no records as to the pension system, if any, which NYCTC paid into during the period of 1951-53 which was before they were part of CUNY. However, here again, I shall endeavor to find out this information for you. I note from your letter that "several other agencies" have not been able to provide this information to you.

never response

Sincerely,

Arnold Cantor
Executive Director

AC/rcf
cc: Dr. Irwin Polishook
Ms. Clarissa Weiss
enclosure
Opeiu #153

Ex. H, Item 21

American Association of University Professors
American Federation of Teachers Local 2334 • New York State AFL-CIO
New York State United Teachers • New York City Central Labor Council

BOARD OF HIGHER EDUCATION

499-PSC

Title Code	Title	Deferral Range	2 Week Deferral
04108	Professor	$750-1,250	$1,100
04024	Associate Professor	750-1,000	843
04008	Asst. Professor	750-850	687
04291	Adjunct Professor	30-31-32 /Adjunct Rate	
04292	Adjunct Assoc. Professor	27-28-29 /Adjunct Rate	
04293	Adjunct Asst. Professor	25-26 /Adjunct Rate	
04294	Adjunct Lecturer	22-23-24 /Adjunct Rate	
	Graduate Fellow ("A", "B")	"A" 370-300 /"B" 185-150	"A" 225, "B" 115
04090	Instructor	750-600	530
	Research Assoc.		
04132	Research Asst.	750-200	445
04126	Registrar	1,000	946
	Distinguished Professor from within CUNY	750-1,250	1,291
04034	Asst. Registrar	600-1,000	749
04010	Asst. Registrar	900-600	609
	Registrar's Asst.	NOT AN ACTIVE POSITION	
04611,04058	College Laboratory Technician	500	844
04060	Senior College Lab Technician	500	844
04064	College Physician	750-300	508
04906	Lecturer	750-600	833
94986	Higher Education Officer	750-1,250	1,176
04075	Higher Education Assoc.	750-1,000	861
04099	Higher Education Asst.	750-1,000	672
04017	Asst. to Higher Education	750-600	559
04015	Higher Education Intern		373
04038	Business Manager	600-1,250	1,115
04000	Asst. Business Manager	800-1,000	819
04016	Asst. to Business Manager	750-600	609
	Chairman of College Department		

PLAINTIFF'S EXHIBIT I. AFFIDAVIT IN OPPOSITION

PURCHASE OF OUTSIDE SERVICE CREDIT

NAME ALICE E. CLISSURAS SCHOOL NYC COMM. COLLEGE MEMBERSHIP # 130358

I RATE CONDITIONS AS OF November 1, 1968

1 AGE AT NEAREST WHOLE YEAR 42

2 SEX ~~(MALE)~~ (FEMALE)

3 INTEREST STATUS (4%) ~~(3%)~~

4 RETIREMENT ELIGIBILITY ~~(redacted)~~ (25/55)

5 RETIREMENT BENEFIT (CLANCY) ~~(redacted)~~

6 SERVICE CREDIT (nearest year) 15

7 OUTSIDE SERVICE TO BE PURCHASED (yrs. 2 mos. 6 das. 0)

II SALARY AS OF DATE OF APPLICATION BUT NOT EARLIER THAN 4/29/62:

a) DATE OF APPLICATION November 1, 1968

b) SALARY $16,130. (AS PER ANNUITY SAVINGS CARD)

c) IS PRESENT RATE OF MEMBERS CONTRIBUTION LESS THAN 15% Yes

BENEFIT	YEARS OF SERVICE			
	15	17	18	2.273490
SERVICE RESERVE	1.536357	1.629403	1.675927	2.118404
DISABILITY "	.361775	.379519	.389918	.155086
DEATH "	.198847	.209435	.214380	X 16,130
VESTING "	.021425	.023644	.024753	
TOTAL	2.118404	2.242001	2.304978	

no record of prior purchase

1 COST: $2501.54

2 NEW REQUIRED RATE

3 DATE OF PAYMENT
(Date of letter plus 30 days)

4 RIGHT TO PURCHASE EXPIRES 11/1/72

SERVICE DIV. (Initial & Date) EVALUATION DIV. JRK 6/1/81 (Initial & Date) RATE DIV. (Initial & Date)

RECOMPUTE

PLAINTIFF'S EXHIBIT J. AFFIDAVIT IN OPPOSITION

RIOR SERVICE:

hen you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to credit
r previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In order
r such prior service to be credited, you must properly fill out page three of this application.

You are entitled to immediate credit for prior service as follows:

(a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retirement system; or,

(b) If it was rendered during which employment you became a member of this System.

(c) Service credit that was transferred from any public retirement system in New York City or New York State.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS. PP. 637-646

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- -x

ALICE CLISSURAS, :

Plaintiff, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, : Index No. 20522/85

Defendants. :

- -x

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY TO DISMISS THE COMPLAINT

PREFATORY STATEMENT

Plaintiff, pro se, submits this memorandum in opposition to motion of defendant Professional Staff Congress/CUNY (hereinafter "PSC") on the grounds that the complaint states causes of action against defendant PSC, that the causes of acti

are not barred by any statutes of limitations, and that, therefore, there is no alternative basis for summary judgment. Among the causes of action against said defendant, the following are included: conspiracy, concealment, breach of contractual and fiduciary duty, and deprivation of rights.

As a brief statement of plaintiff's action, plaintiff sets forth that she was employed as a teacher at New York City Technical College (hereinafter "College") for 34 continuous years from September 1, 1948, to September 1, 1982, the effective date of plaintiff's retirement. Plaintiff's pension benefits were not computed correctly and plaintiff was and is being deprived of substantial payroll and pension benefit amounts. The basic deprivation consists of the failure of the Teachers' Retirement System of the City of New York (hereinafter "Retirement System") to calculate plaintiff's pension for 34 years of New York City service and instead the Pension System calculated her pension on the basis of 29 years of service, which resulted in a loss of five years of pension benefits and a loss of the 30-year retirement special allowance, among other losses. None of the defendants, including defendant PSC, informed plaintiff of the 30-year retirement calculation and of other benefit omissions, losses, inaccuracies, and improprieties. These causes of action were and are still being concealed to date by all of the defendants. (Complaint, paras. EIGHTEENTH and NINETEENTH of FIRST CAUSE OF ACTION.) Further, all of the

defendants, including defendant PSC, have concealed and continue to conceal the improper process by which plaintiff was required to purchase service credit for which she should have been given immediate or automatic credit. The errors in plaintiff's financial records have been concealed and continue to be concealed by all defendants. And, plaintiff has been deprived of her rights by all defendants, including defendant PSC, by virtue of all of the foregoing.

Moreover, the circumstances of plaintiff's retirement process point to a conspiracy on the part of all the defendants, including PSC, to conceal the correct pension benefits fraudulently, in breach of their contractual and fiduciary duties and relationships. For all of the causes of action to plaintiff's damage, plaintiff seeks judgment as set forth in the complaint, as against defendant PSC, the City Defendants (the City of New York, the Retirement Board, and the Retirement System), the City University Defendants (Board of Higher Education, City University, and the College), the Department of Insurance of the State of New York, and Lewis Rosenberg.

STATEMENT OF FACTS

Plaintiff was employed as a teacher at defendant College for 34 continuous years. Prior to retirement, the Retirement System would not answer any questions reqarding the pension benefits and plaintiff was instructed to go to her Union for any

needed information. Plaintiff then met with the Pension Officer of the PSC, Ms. Beryl Weinberg, who gave plaintiff a version of her pension calculation which was in the semblance of the pension plan in the Administrative Code of the City of New York, Chapter 20, but who did not reveal the source of the plan she was using. After retirement, in response to plaintiff's questions, the Pension System informed plaintiff that the formula used to calculate her pension was in the Code. Plaintiff was told this by the fiduciary Pension System and the PSC perpetuated this by showing the calculations in the semblance of the §B20-41.2 formula of the Code. All the defendants, including the PSC, have concealed the correct pension plan from plaintiff and all defendants have not revealed it to date. Thus, from January, 1983, to August, 1985, defendants' misinformation forced plaintiff to expend considerable time and effort in the understanding of Code B20, in trying to retain an attorney, and in attending law school. By August, 1985, plaintiff had acquired sufficient information to know what the causes of action were, in the main.

Thus, as to the causes of action as set forth in four major areas in the complaint and defendant PSC, the PSC concealed for the first cause of action the pension plan which should have been used to determine plaintiff's pension. As to the second cause of action, credit for prior service, the PSC concealed the rules and regulations for granting credit for plaintiff's

prior service for which service credit should have been given automatically, but instead plaintiff was required to purchase the service as outside service. As to the third cause of action, errors in plaintiff's Statements of Accounts, the PSC did nothing to correct the omission of purchase money from plaintiff's Annuity. And, as to the fourth cause of action, the deprivation of rights, defendant PSC breached its contractual and fiduciary duties to plaintiff and deprived plaintiff of the right to correct pension information. Finally, all of the above circumstances point to a conspiracy on the part of all of the defendants to deprive plaintiff of her maximum pension benefits by concealing the nature and amount of those benefits.

POINT I

THE COMPLAINT SETS FORTH CAUSES OF ACTION IN FOUR MAJOR AREAS

As to the first cause of action, essentially the calculation of plaintiff's pension, the defendants fraudulently concealed the pension plan which should have been applied to calculate plaintiff's pension and plaintiff was, therefore, deprived of her maximum and correct pension benefits.

The elements required for this first cause of action as to fraud, all of which elements are present herein as to all of the defendants, including defendant PSC, are: false statements including concealments, knowledge of falsity including

exception for fiduciary relationship, intention to induce reliance, reliance, and damage. Keeton, Prosser and Keeton on Torts, 5th Ed., pp. 728, 738 (1984).

Defendant PSC concealed the 30-year retirement allowance which plaintiff with 34 years of service should have received, concealed the rules and regulations by which plaintiff should have been granted credit for prior service, concealed the errors in plaintiff's Statements one of which was the failure to place purchase money in plaintiff's Annuity, and concealed plaintiff's contractual entitlements.

All of the defendants conspired to conceal the correct pension benefits from plaintiff. In a civil conspiracy, the essence is the damage and the averment of a conspiracy is important for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

As to the second cause of action, credit for prior service, the regulations for granting credit for plaintiff's prior service were fraudulently concealed from plaintiff and defendant PSC conspired with other defendants to conceal that plaintiff should not have been required to purchase as outside service 2-1/2 years of service for which she should have been given automatic and immediate credit since it was service in the job of entry in membership in the Retirement System.

As to the third cause of action, plaintiff's financial records, defendant PSC did nothing about the placement of the purchase money in plaintiff's Annuity Savings Fund.

As to the second and third causes of action, the arguments made above for fraud and conspiracy with respect to the first cause of action prevail also for the second and third causes of action.

As to the fourth cause of action, the deprivation of rights, defendant PSC did not provide plaintiff with correct pension information and with contractual entitlements and, in addition, concealed the causes of action. As to contractual and fiduciary duties to plaintiff, the PSC stands in superior knowledge or expertise on pensions over plaintiff and in such position owed plaintiff correct answers on the basis of this superior knowledge and position of trust. Defendant PSC breached its contractual and fiduciary duties for all of plaintiff's causes of action.

There are nine defendants united in interest in this action. The claims and issues as to defendant PSC are intertwined with eight other defendants. The significance of the allegation of conspiracy is to charge that this actionable wrong was committed jointly by defendants so that acts of one are imputed to others because of their common purpose and intent. In this case, the purpose was to deprive plaintiff of knowledge of and receipt of her correct pension benefits.

POINT II

NONE OF THE CAUSES OF ACTION IS TIME BARRED; ALL OF THE STATUTES OF LIMITATIONS ARE IN PLACE

For the causes of action of conspiracy, fraud, and breach of contract and fiduciary duty, among other causes, the three-year, six-year, and continuing wrongs limitations are in place and have not expired as to any causes of action.

As to the Article 78 proceeding, it is inappropriate for the plaintiff's causes of action. The Article 78 is a procedural device for obtaining relief previously sought by writs of certiorari for review, mandamus, or prohibition. Such writs are not appropriate for the causes of action herein. In addition, even if an Article 78 proceeding is available, there is no basis for believing that New York courts regard this proceeding as the exclusive means for pursuing such claims. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), cert denied, 102 S.Ct. 1631 (1982).

Further, as to the Article 78, "restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner . . ." Chase, Civil Litigation in New York, p. 849 (1983). In plaintiff's action, restitution for the first cause of action is upwards of $30,000.

Further, as to the Article 78, it is difficult to obtain disclosure and in plaintiff's case disclosure is vital

to success on the merits. The pension plan has not been disclosed by defendants. Plaintiff's records have not been produced. And these are just two examples of the importance of disclosure in plaintiff's action. Defendants have not documented their arguments. The PSC does not state what the actual pension plan is and the PSC states that there is no 30-year allowance without giving any source for its positions. These two statements illustrate the concealment and misstatements which comprise the basis for the causes of action against the PSC. D. Nicholas Russo, Esq., attorney for defendant PSC, argues time bars of both the four-month and six-month statutory periods. The defendants' conspiracy to conceal the causes of action resulted in plaintiff's having acquired sufficient information as to the causes of action as late as July, 1985, and plaintiff brought this action in August of 1985.

It is impossible for the defendants to dispute the issues of fact herein without stating the pension plan which not one defendant has done to date.

CONCLUSION

WHEREFORE, for all of the reasons set forth herein, and in greater detail in the complaint, this Court should deny defendant PSC's motion to dismiss the complaint and order a trial by jury of the facts in dispute in this action.

Dated, December 18, 1985.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff in Person

TO: ATTORNEYS

D. NICHOLAS RUSSO, ESQ.
Attorney for Defendant Professional Staff Congress/CUNY

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for Insurance Department and City University Defendants

FREDERICK A. O. SCHWARZ, JR., ESQ.
Corporation Counsel of the City of New York
Attorney for City Defendants

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant Lewis Rosenberg

RUSSO, REPLY AFFIRMATION IN SUPPORT, PP. 647-650

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS, :

Plaintiff, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG :

Defendants. :

- x

Index No. 20522/85

REPLY AFFIRMATION

D. NICHOLAS RUSSO, an attorney at law duly admitted to practice before the Courts of the State of New York, under the penalty of perjury affirms the following:

1. I am the attorney and Director of Legal Affairs of the defendant Professional Staff Congress/CUNY (hereafter "PSC"), and I make this reply affirmation in support of defendant PSC's motion to dismiss the complaint and, alternatively, for summary judgment.

2. Annexed hereto as Exhibit 4 (the preceding three exhibits of defendant PSC having been attached to its original set of moving papers) is a true photocopy of a Judgment and Order, dated December 12, 1985, and signed by Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York, dismissing an action against all defendants that was brought by the same plaintiff in the instant action against the same defendants in the instant action, inter alia on the ground that plaintiff's federal claims were barred by the statute of limitations. On November 14, 1985 Judge Weinstein had dismissed plaintiff's action in open court against all defendants; the annexed Judgment and Order was executed by him pursuant to his November 14th holding.

3. Annexed hereto as Exhibit 5 is a true photocopy of plaintiff's federal complaint. A comparison of plaintiff's federal complaint with her state complaint (attached as Exhibit 2 to defendant PSC's instant motion papers) indicates the following:

(a) The two complaints are identical, word-for-word, except for ¶s 8 and 9.

(b) In ¶s 8 and 9 of the federal complaint, plaintiff invokes jurisdiction regarding her allegations of discrimination on the basis of sex and religion under Title VII of the Civil Rights Act of 1964 and states that she received a notice of right to sue from the Equal Employment Opportunity Commission.

In ¶s 8 and 9 of her state complaint, plaintiff indicates the various notices of claim she made on some of the defendants, excluding defendant PSC.

4. At ¶10 of plaintiff's "Affidavit in Opposition to Motion of Defendant Lewis Rosenberg to Dismiss Complaint" -- another defendant in the within action -- plaintiff admits that "[a]fter April 5, 1983, the Union [PSC] stopped meeting and talking with plaintiff ..." (A photocopy of plaintiff's complete affidavit is annexed as Exhibit 6).

5. Even if plaintiff had a valid claim of discrimination against defendant PSC, it accrued at the latest on April 5, 1983.

6. Because complaints of discrimination must be filed within one year with the State Divison of Human Rights (9 NYSCRR §465.3(e)) and, in New York State, within 300 days with the U.S. Equal Employment Opportunity Commission (42 USC §2000e-5) even plaintiff's bald assertions of discrimination must be dismissed as time barred.

WHEREFORE, defendant PSC's Motion to Dismiss or, in the alternative, for Summary Judgment should be granted with costs and disbursements and such other further and proper relief that this Court may deem proper.

/S/

D. NICHOLAS RUSSO

Dated: 19 December, 1985
New York, New York

RUSSO, EXHIBIT 4, REPLY AFFIRMATION, PP. 651-652

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

ALICE CLISSURAS,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.
----------x

JUDGMENT AND ORDER
CV 85-3180

Plaintiff having brought this action for relief pursuan to Title VII of the Civil Rights Act and upon various pendant state claims.

Defendants City of New York, Teachers' Retirement Board of The City of New York, Teachers' Retirement System of the Cit of New York, Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York, and Lewis Rosenberg having moved to dismiss for failure to state a claim upon which relief may be granted and;

The motions to dismiss of defendants City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York, Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York, and Lewis Rosenberg having been heard by thi Court on November 14, 1985; and

Ex. 4

Defendant: Professional Staff Congress/CUNY having appeared before this Court at oral argument on November 14, 1985; and

The Court having considered defendants' motions and the written briefs and, oral argument in support thereof as well as plaintiff's written and oral responses thereto; and

The Court having determined on the record that plaintiff's federal claims should be dismissed on the merits as barred by th statute of limitations; and

The Court having ruled that no Constitutional violation exists; and

The Court having exercised its discretion in declining to extend its pendent jurisdiction over the state law claims; it is

ORDERED that the motions be and the same are hereby granted and it is further

ORDERED, ADJUDGED and DECREED, that plaintiff's federal claims be dismissed on the merits, that plaintiff's state claims be dismissed without prejudice, that the defendants have and recover their costs, and that the complaint be dismissed as to a defendants.

Dated: New York, New York
December 12, 1985

SO ORDERED:

U.S.D.J.

REPLY AFFIRMATION IN SUPPORT OF DEFENDANT PROFESSIONAL STAFF CONGRESS/CUNY'S MOTION TO DISMISS COMPLAINT

EXHIBIT 5: UNITED STATES DISTRICT COURT VERIFIED COMPLAINT

(COMPLAINT HAS NOT BEEN INCLUDED HERE SINCE IT CAN BE FOUND ON pp. 163-197 HEREIN.)

REPLY AFFIRMATION OF IN SUPPORT OF DEFENDANT
PROFESSIONAL STAFF CONGRESS/CUNY'S
MOTION TO DISMISS COMPLAINT

EXHIBIT 6: AFFIDAVIT IN OPPOSITION TO MOTION OF
DEFENDANT LEWIS ROSENBERG TO DISMISS
COMPLAINT

(SINCE THE ENTIRE AFFIDAVIT APPEARS ON pp. 455-463 HEREIN
ONLY THE RELEVANT PAGE APPEARS HERE.)

information and direction as to how to proceed, to no avail.

10. After April 5, 1983, the Union stopped meeting and talking with plaintiff and became very abusive about plaintiff's seeking information. From that date forward, plaintiff could not obtain an attorney after countless attempts. She was blocked from using public resources that would be helpful to her and from filing claims with governmental agencies. She was forced to enroll in law school in order to gain the knowledge she needed to bring this action pro se. And, she was under pressure to begin the action in 1985 in order to avoid the expiration of the 3-year statute of limitations.

11. Defendant Rosenberg ended his representation of plaintiff with another warning about the short statute of limitations. Plaintiff attempted frantically to retain another attorney, again to no avail. This pressure has continued and has steadily increased to the present since, although plaintiff has not been able to retain an attorney, the defendants did not seem to have any difficulty in this respect.

12. Concealment on the part of Defendant Rosenberg was not limited to the pension plan applicable to plaintiff. He also concealed the rules according to which plaintiff should have been granted credit for prior service and the method by which the purchase money should have been credited. The circumstances of these concealments follow the pattern of the events described above for the pension plan since plaintiff discussed prior

LETTER FROM SENIOR COURT REPORTER

VICKI KAREN BRODY
Senior Court Reporter
Brooklyn Supreme Court
360 Adams Street
Brooklyn, New York 11201

December 17, 1985

MS. ALICE CLISSURAS
215 Adams Street
Brooklyn, New York 11201

Dear Ms. Clissuras,

As per our telephone conversation of 12/17/85, please be advised that I was assigned to Judge Pizzuto on October 28, 1985.

From speaking with Judge Pizzuto's law secretary on that date in the A.M., I was informed that he was working in Special 1 and my presence was not needed. Therefore, there was no record made in the case of Clissuras v. City of New York on that date by myself.

Sincerely,

Vicki K. Brody

Vicki K. Brody
Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, et al., :

Defendants-Appellees. :

- x.

ALICE CLISSURAS, plaintiff-appellant, pro se, does hereby certify pursuant to Section 2105 of the Civil Practice Law and Rules to the correctness of the transcript of the proceedings in the above-entitled action as set forth herein and of all the papers constituting the Record on Appeal.

Alice Clissuras

ALICE CLISSURAS
Plaintiff-Appellant, pro se

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

(3)

87-1162

Supreme Court, U.S.
FILED
JAN 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

RECORD ON APPEAL

VOLUME III OF THREE VOLUMES: PAPERS ON APPEAL TO N.Y.S.CT.AP.; U.S.S.CT. (pp. 658-901)

PETER M. ZIMROTH
Corporation Counsel of the City of New York
Attorney for City Defendants-Respondents
100 Church Street
New York, NY 10007
(212) 566-6458

ROBERT ABRAMS
Attorney General of the State of New York
Attorney for City University and Insurance Department Defendants-Respondents
120 Broadway
New York, NY 10271
(212) 341-2641

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

D. NICHOLAS RUSSO
Attorney for Defendant-Respondent Professional Staff Congress/CUNY
25 West 43d Street
New York, NY 10036
(212) 354-1252

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant-Respondent Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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NOTE: There are nine defendants with four legal representations. All defendants made motions to dismiss the complaint which were heard at three, separate hearings: November 13, 1985 (City Defendants and Insurance Department Defendant); December 16, 1985 (Defendant Rosenberg); and December 20, 1985 (City University Defendants and Defendant Union). Thus, there are three Notices of Appeal. The Appellate Division, Second Department, granted plaintiff's request to consolidate the three appeals into one for the appellate proceedings.

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ALL PARTIES AND THEIR
ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.

N.Y.S. Ct. of Ap., Mo. No. 1166SSD74
N.Y.S.S.Ct. App. Div. 2d, Nos. 3774E-3776E
N.Y.S.S.Ct. Kings Co., Index No. 20522/85

Plaintiff-Appellant, ALICE CLISSURAS, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

City Defendants-Appellees, CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of NY
Attorney for City Defendants-Appellees
Michael Adler, Asst. Corp. Counsel
100 Church Street
New York, NY 10007
(212) 566-4331

State Defendants-Appellees, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, and DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK

ROBERT ABRAMS, ESQ.
Attorney General of the State of NY
Attorney for State Defendants-Appellees
Anne Ehrenkranz, Asst. Atty. Gen.
120 Broadway
New York, NY 10271
(212) 341-2641

Union Defendant-Appellee, PROFESSIONAL STAFF CONGRESS/CUNY

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs, Professional Staff Congress/CUNY
Attorney for Union Defendant-Appellee
25 West 43d Street
New York, NY 10036
(212) 354-1252

Union Attorney Defendant-Appellee, LEWIS ROSENBERG

BERGADANO, ZICHELLO, & BABCHIK, ESQS.
Attorneys for Union Attorney Defendant-Appellee
Ann McIntyre, Of Counsel
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

PLAINTIFF'S JURISDICTIONAL STATEMENT TO COURT OF APPEALS (PP. 658-679)

COURT OF APPEALS OF THE STATE OF NEW YORK

- -x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK,
TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK,
BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK,
CITY UNIVERSITY OF NEW YORK,
NEW YORK CITY TECHNICAL COLLEGE,
PROFESSIONAL STAFF CONGRESS/CUNY,
DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and
LEWIS ROSENBERG,

Defendants-Respondents.

- -x

APPELLANT'S JURISDICTIONAL STATEMENT

This appeal is taken from the Supreme Court of the State of New York, Appellate Division, Second Department.

The Notice of Appeal is dated July 14, 1987, and it was served and filed on July 14, 1987.

An unsigned Appellate Division Decision and Order (one paper) was mailed to plaintiff-appellant, postmarked June 23, 1987, by the Law Department of the City of New York, representing the City Respondents; said Decision and Order was entered June 22, 1987.

There are four legal representations for the nine defendants-respondents, as follows:

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of New York
Francis F. Caputo and Michael S. Adler, of Counsel
Attorneys for Defendants-Respondents City of New York,
Teachers' Retirement Board of the City of New York, and
Teachers' Retirement System of the City of New York
100 Church Street
New York, NY 10007
(212) 566-4331

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Anne Ehrenkranz, of Counsel
Attorneys for Defendants-Respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College, Department of Insurance of the State of New York
Two World Trade Center
New York, NY 10047
(212) 488-5744

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs of the Professional Staff Congress/C
Attorney for Defendant-Respondent Professional Staff Congress/ CUNY
25 West 43d Street
New York, NY 10036
(212) 354-1252

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Ann Teresa McIntyre, of Counsel
Attorneys for Defendant-Respondent Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

The following papers are attached at the end hereof:

The Notice of Appeal

The Decision and Order of the Appellate Division, Second Department

There was no opinion or memorandum of the Appellate Division

Special Term Judgment of the Supreme Court of the State of New York, County of Kings (Shaw, Jr.), entered in the office of the Clerk of the County of Kings, on the 19th day of December, 1985, dismissing the complaint as against the City Defendants and the Defendant Department of Insurance

Special Term Memorandum of the Supreme Court, Kings County (Bernstein), entered in the office of the Clerk of Kings County, on the 2d day of January, 1986, dismissing the complaint as against Defendant Lewis Rosenberg

Special Term Order of the Supreme Court, Kings County (Hurowitz), entered in the office of the Clerk of Kings County, on the 19th day of February, 1986, dismissing the complaint as against the City University Defendants and the Defendant Professional Staff Congress/CUNY

Special Term Memorandum of the Supreme Court, Kings County (Shaw, Jr.), informal finding and conclusion, dated November 19, 1985

Plaintiff brought this action against the nine defendants, as follows:

Employment Discrimination: Plaintiff was discriminated against on the basis of sex and religion. She was deprived of her employment moneys and the laws were not applied to her equally as Constitutionally required. New York State Constitution, Article I, Section 2; Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983); CPLR §214(2); §218(a);

Constitutional due process rights have been withheld throughout; i.e., no hearing of this cause of action has been held to date.

Fraud: The employment discrimination was effected by fraudulent misrepresentations of fact and concealment of the facts. CPLR §213(8)

The issues of fraud, concealment, and misrepresentation were dismissed without a trial.

Conspiracy: All of the defendants concealed the causes of action herein. Connor v. Bryce, 170 N.Y.S. 94, 95-96 (1918).

Breach of Contractual and Fiduciary Duties: Membership in a public retirement system in the State results in a contractual relationship, which was breached herein. In addition, no accounting has been made to date of plaintiff's moneys. New York State Constitution, Article V, Section 7; CPLR §213.

Deprivation of Constitutional Rights to trial by jury and to counsel.

The many issues of fact in this action were dismissed without trial (and also without hearing).

Gross Negligence: The many errors made by fiduciary defendants were not corrected.

Abuse of Plaintiff's Person, Rights, and Property

All of the above issues were raised in the Second Department and Kings County. The above causes of action were dismissed by Kings County on the ground of all the causes being barred by a 4-month statute of limitations. The Second Department affirmed the dismissal on said ground.

Not one of the above causes is barred by a 4-month limitation.

The Courts and the Defendants have not responded to the causes of action.

Plaintiff has documented all of the causes of action; the defendants have not offered any documentation or substantiation of their arguments.

The plaintiff is pro se due to the refusal of over 30 attorneys to represent her. The Courts and the Defendants appear to use tactics to take advantage of Plaintiff's limited legal background.

The Plaintiff will, in addition to the above, raise all other relevant issues.

Dated: July 15, 1987.

Plaintiff hereby attests that on July 15, 1987, she served each opposing counsel, by mail, with a copy of this paper with the attachments.

/s/

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

NOTICE OF APPEAL TO COURT OF APPEALS (PP. 662-665)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

NOTICE OF APPEAL

Index No. 20522/85

S I R S:

PLEASE TAKE NOTICE, that the above-named plaintiff, relying upon the provisions of the Constitution of the United States and the Constitution of the State of New York, which involve discrimination, civil rights, due process, equal protection of the laws, right to trial, and right to counsel, hereby appeals as of right to the Court of Appeals from the Decision and Order (one paper) of the Appellate Division of the Supreme Court, Second Judicial Department, entered in the office of the Clerk of said Appellate Division, on the 22d day of June, 1987, which unanimously affirmed the three Orders of the Special Term

of the Supreme Court of the State of New York, County of Kings, entered in the office of the Clerk of the County of Kings, on the 19th day of December, 1985 (Shaw, Jr.), as against the City Defendants and the Defendant Department of Insurance; on the 2d day of January, 1986 (Bernstein), as against Defendant Lewis Rosenberg; and on the 19th day of February, 1986 (Hurowitz), as against the City University Defendants and the Defendant Professional Staff Congress/CUNY; which three Orders dismissed the complaint as against all of the defendants herein on the ground that plaintiff's claims of employment discrimination, fraud, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach of contractual and fiduciar duties, were barred by a four-month statute of limitations, and the said plaintiff appeals from each and every part of said order of the Appellate Division, and from the whole thereof.

Dated: July 14, 1987.

Yours, etc.,

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

TO:

The Clerk of the County of Kings

Attorneys for the Defendants-Respondents
(Names, addresses, and telephone numbers appear on the next page.)

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of New York
Francis F. Caputo and Michael S. Adler, of Counsel
Attorneys for Defendants-Respondents City of New York,
Teachers' Retirement Board of the City of New York, and
Teachers' Retirement System of the City of New York
100 Church Street
New York, NY 10007
(212) 566-4331

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Anne Ehrenkranz, of Counsel
Attorneys for Defendants-Respondents Board of Higher
Education of the City of New York, City University of
New York, New York City Technical College, Department
of Insurance of the State of New York
Two World Trade Center
New York, NY 10047
(212) 488-5744

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs of the Professional Staff Congress/CUNY
Attorney for Defendant-Respondent Professional Staff Congress/
CUNY
25 West 43d Street
New York, NY 10036
(212) 354-1252

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Ann Teresa McIntyre, of Counsel
Attorneys for Defendant-Respondent Lewis Rosenberg
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

Index No. 20522/85 Year 19

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF KINGS

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Respondents.

NOTICE OF APPEAL

ALICE CLISSURAS
Plaintiff-Appellant, pro se

Office and Post Office Address, Telephone

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

To

Clerk of the Court
Attorney(s) for Defendants-Respondents

FILED
1987 JUL 14 PM 2:46
KINGS COUNTY CLERK

The NYC Law Department File Number for this matter is _____

It is assigned to _____ 566-

REC. ON AP.. P. 666

Your reference to the above File Number on all documents and correspondence would be appreciated.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

DECISION 6/22/87. APP. DIV. (PP. 666-669)

____ AD2d ____ Argued March 9, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

3774E
3775E
3776E

Alice Clissuras, appellant,
v City of New York, et al.,
respondents.

DECISION & ORDER

Alice Clissuras, Brooklyn, N.Y., appellant pro se.

Peter L. Zimroth, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Michael S. Adler of counsel), for respondents City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York.

Robert Abrams, Attorney-General, New York, N.Y. (Anne Ehrenkranz of counsel), for respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Department of Insurance of the State of New York.

D. Nicholas Russo, New York, N.Y., for respondent Professional Staff Congress/CUNY.

Bergadano, Zichello & Babchick, New York, N.Y. (Ann Teresa McIntyre of counsel), for respondent Lewis Rosenberg.

[illegible] (1) an order of the same court (Silverman, J.) dated December 24, 1985, which, upon his motion, dismissed the complaint insofar as it is asserted against the defendant Leola Rosenberg, and (3) an order of the same court (Silverman, J.) dated February 14, 1986, which, upon their motion, dismissed the complaint insofar as it is asserted against the defendants Board of Higher Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY.

ORDERED that the order and judgment and the orders are affirmed, without costs or disbursements.

The plaintiff's claims against the public agency defendants, while not brought in the form of a proceeding pursuant to CPLR article 78, are governed by the four-month Statute of Limitations in CPLR 217 (see, Press v Monroe County, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224). Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits. The plaintiff retired in 1982 and the determination as to the amount of her pension was approved by the defendant Teachers' Retirement Board of the City of New York on January 20, 1983. This action, commenced more than two years later, is thus time barred as to the public agency defendants.

The claims against the defendant union, the Professional Staff Congress/CUNY, were also properly dismissed. The plaintiff's various allegations of wrongdoing by the union are [illegible] a claim for breach of the duty of fair representation. The evidence in the record shows that the union's staff met with the plaintiff in attempt to resolve issues concerning her pension benefits and at one point arranged for representation by an outside attorney before concluding that her claims were without merit. While the plaintiff disagrees with the union's assessment as to the validity of her pension claims, she has not shown that the union's conduct was arbitrary, discriminatory or in bad faith (see, Barr v Civil Service Bar Assn. v City of New York, [illegible] Samuels v Real Estate Corp., 62 NY2d [illegible]).

We agree with the determination that the plaintiff's complaint fails to state a cause of action against the defendant Rosenberg, an attorney to whom the plaintiff was referred by the union in February 1981 for assistance in bringing a lawsuit against the defendant Teachers' Retirement Board of the City of New York. The plaintiff failed to allege facts sufficient to show that Rosenberg did not exercise "that degree of skill commonly exercised by an ordinary member of the legal community, resulting in damages to the client" (Bayeta v Reilly, 111 AD2d 491). Rosenberg withdrew as the plaintiff's attorney after arranging for her consultation with an actuary regarding her claim and after advising her of the four-month Statute of Limitations. Any damages caused by the plaintiff's failure to timely bring this action were not attributable to his conduct.

Finally, we have reviewed the remaining contentions of the plaintiff and find them to be without merit.

BRACKEN, J.P., LAWRENCE, KUNZEMAN and SPATT, JJ., concur.

ENTER:

MARTIN H. SCHWARTZ
Clerk

County Clerk's Index No 19

PLEASE TAKE NOTICE, that an order, of which the within is a copy, was duly entered in the office of the Clerk of the Appellate Division of the Supreme Court in and for the Second Judicial Department on the 22 day of June, 987.

Yours, etc.,

Peter L. Zimroth
Corporation Counsel,
Attorney for Municipal Respondents
100 Church Street,
New York, N. Y. 10007
Telephone: 566-4331

To: Alice Clissuras
Appellant Pro Se

New York Supreme Court

APPELLATE DIVISION, SECOND DEPARTMENT

Alice Clissuras,

Plaintiff-Appellant,

-against-

City of New York et al.,

Defendants-Respondents.

Appellate Division Order and Notice of Entry

Peter L. Zimroth
Corporation Counsel,
Attorney for Municipal Respondents
100 Church Street,
New York, N. Y. 10007

Due and timely service of a copy of the within Order and Notice of Entry is hereby admitted.

New York, ..., 19

.....
Attorney for

To

....., Esq.,
Attorney for

REC. ON AP., P. 669

JUDGMENT 12/18/85 (SHAW, J.S.C.) PP. 670-672

At a Special Term, Part 1 of the Supreme Court of the State of New York, County of Kings at the Courthouse, Civic Center, Brooklyn, New York on the 18 day of December, 1985.

P R E S E N T:

HON. JAMES H. SHAW, JR.

JUSTICE.

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

----------x

PROPOSED JUDGMENT

Index No. 20522/85

Plaintiff herein having commenced this action for $500,000 in compensatory damages and $2,000,000 in punitive damages and for a judgment directing defendants to undertake an accounting of plaintiff's pension moneys; and

Defendants City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York

(City defendants) having moved pursuant to CPLR § 3211(a)(5) to dismiss the complaint because the action is barred by the statute of limitations; and

Defendant Department of Insurance of the State of New York (Insurance Department) having moved pursuant to CPLR §§ 3211(a)(2), 3211(a)(5), and 3211(a)(7) to dismiss the complaint because the Court lacks subject matter jurisdiction of plaintiff's claim for damages, the action is barred by the statute of limitations, and the complaint fails to state a cause of action; and

The aforementioned motions to dismiss having been heard by the Honorable James H. Shaw, Jr., at a Special Term, Part I of this Court, held at the Courthouse located at the Civic Center, Brooklyn, New York on November 13, 1985; and

The Court having considered the said motions and written memoranda and oral argument in support thereof, as well as plaintiff's written and oral responses thereto;

NOW, upon reading and filing the Notice of Motion to Dismiss of the City defendants, undated and the supporting affidavit of Suzanne Lank, dated October 30, 1985 and all exhibits annexed thereto, the Notice of Motion to Dismiss of the Insurance Department, undated and the supporting affidavit of Sue Barnett Bohringer, sworn to October 15, 1985 and all exhibits annexed thereto, plaintiff's affidavit in opposition to the City defendants' motion to dismiss, and all exhibits annexed thereto, plaintiff's affidavit in opposition to the Insurance Department's motion to dismiss, dated November 6, 1985 and affidavit in opposition of Alice Closson dated November 7, 1985 and all exhibits annexed thereto, and the affirmation of Suzanne Lank, both dated November 12, 1985 in reply to plaintiff's affidavit responding to the City defendants' motion to dismiss; and plaintiff having appeared pro se; City defendants having appeared by FREDERICK A. O. SCHWARZ, JR.,

Corporation Counsel of the City of New York, by Suzanne Lank; and the Insurance Department having appeared by Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer; and upon the written memorandum decision of this Court dated November 19, 1985;

NOW, upon the motion of FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, Assistant Corporation Counsel, attorney for City defendants, it is

ADJUDGED that plaintiff's causes of action against both the City defendants and the Insurance Department are barred by the four-month statute of limitations; and the complaint is dismissed as to the City defendants and the Insurance Department, and the action is severed accordingly

ENTER:

Dated:

James H. Shaw Jr.
J.S.C.

Dorothy A. Dunn
Clerk

FILED
FEE

DECISION 1/2/86 (BERNSTEIN, J.S.C.) PP. 673-675

FORM 81 288

MEMORANDUM

SUPREME COURT : Kings COUNTY

Alice Clissuras,

Plaintiff,

vs.

City of New York, et al.,

Defendants.

By Bernstein, A.D. J.

Dated December 24, 1985

SPECIAL TERM PART I

Index No. 20522/ 85

The plaintiff brings this action against all of the defendants alleging conspiracy to defraud her from the true amount of pension that she has earned. She claims that the co-conspirator defendants have concealed from her the true amount of her pension, the rights to which she is entitled and the fact that certain increments to which she is due were not included in her pension. The defendant Rosenberg moves to dismiss the complaint on the grounds that it fails to set forth a cause of action. The defendant Rosenberg is an attorney who was retained by the defendant on or about February 6, 1983 by the Professional Staff Congress/CUNY, the union representing the plaintiff. Thereafter, on or about February 15, 1983 the defendant Rosenberg and the plaintiff met in

his office. Thereafter, on or about April 5, 1983 the defendant Rosenberg wrote to the plaintiff withdrawing as her attorney. In the brief submitted by the plaintiff she details the claim against the defendant Rosenberg as follow:

> "Defendant Rosenberg met with plaintiff once on February 15, 1983. She detailed the problems as she knew them at that time and she supported this with the documentation which she had at that time. Defendant Rosenberg did not discuss pleaintiff's (sic) with her; he did not discuss plaintiff's rights or choices; he did not give her any direction. At the end of the meeting, he told her to get an actuary."

It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg.

She alleges in her conclusion that the causes of action against Rosenberg are"concealment of the causes of action, conspiracy, and breach of contract and fiduciary duty, all of which occurred upon contract with defendant Rosenberg and after such contract and are continuing to date."

Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

The motion is granted.

ENTER

J. S. C.

ORDER 1/14/86 (HUROWITZ, J.S.C.). PP. 676-677

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Kings, at the Courthouse, Civic Center, Brooklyn, New York, on the 14 day of January, 1986

PRESENT:

HON. BARRY F. HUROWITZ,

JUSTICE.

----------X

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants.

----------X

ORDER

Index No. 20522/85

UPON the notice of motion and the affidavit of Sue Barnett Bohringer, dated November 26, 1985, together with the exhibits attached thereto, in support of the motion of defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (the "City University defendants") to dismiss the complaint,

the affidavit of plaintiff, dated December 16th, 1985, together with the exhibits attached thereto, in opposition to the motio of the City University defendants, the notice of motion and the affirmation of D. Nicholas Russo, dated December 6, 1985, together with the exhibits attached thereto, the affidavit of Beryl Weinberg, dated December 9, 1985, in support of the motion of defendant Professional Staff Congress/CUNY to dismis the complaint or, in the alternative, for summary judgment, the affidavit of plaintiff dated December 20th, 1985 in opposition t the motion of Professional Staff Congress/CUNY, the reply affirmation of D. Nicholas Russo, dated December 19, 1985, together with the exhibits attached thereto, in further suppor of the motion of Professional Staff Congress/CUNY, and oral argument having been heard on December 20, 1985, it is

ORDERED that the motion to dismiss of the City of University defendants is granted and the action is severed accordingly, and it is further

BP
JSC

ORDERED that the motion to dismiss of defendant Professional Staff Congress/CUNY is granted and the action is severed accordingly

ENTER

J.S.C.

MEMORANDUM DECISION 11/19/85 (SHAW, J.S.C.)

MEMORANDUM

UPREME COURT COUNTY

ALICE CLISURRASM

Plaintiff,

vs.

CITY OF NEW YORK, et al.,

Defendants,

By James H. Shaw, Jr. J. S. C.

Dated November 19, 1985

Index No. 20522/85

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsquent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.

Settle Judgment

James H. Shaw Jr.

J.S.C.

NOTE OF ISSUE (PP. 679-681)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- -x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, :

Defendants-Respondents.

- -x

NOTE OF ISSUE

Kings County Clerk's Index No. 20522/85

1. The term designated for the argument of the cause is November, 1986.

2. This is an appeal from three orders of the Supreme Court of the State of New York, County of Kings, dismissing the complaint, dated December 18, 1985, December 24, 1985, and February 14, 1986, as against all of the above-named defendants. The three orders have been consolidated for purposes of the appeal.

3. This is an action for employment discrimination sustained by plaintiff. Plaintiff's pension was substantially reduced by reason of defendants' fraud, conspiratorial acts,

violations of plaintiff's civil and due process rights, violations of New York State Pension Laws, concealment of causes of action, gross negligence, and breach of fiduciary and contractual obligations.

4. The action was commenced on August 28, 1985. This is an appeal from: an order of Hon. James H. Shaw, Jr., J.S.C.; an order of Hon. A. D. Bernstein, J.S.C.; and an order of Hon. Barry Hurowitz, J.S.C.

5. The date of filing the Record on Appeal is September 8, 1986.

6. The names, addresses, and telephone numbers of the attorneys of record and of any additional counsel for the respective parties are:

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

FREDERICK A. O. SCHWARZ, JR.
Corporation Counsel of the City of New York
Attorney for City Defendants-Respondents
Michael Adler, of Counsel
100 Church Street
New York, NY 10007
(212) 566-6458

ROBERT ABRAMS
Attorney General of the State of New York
Attorney for City University and Insurance Department
Defendants-Respondents
Sue Barnett Bohringer, of Counsel
Two World Trade Center
New York, NY 10047
(212) 488-5744

D. NICHOLAS RUSSO
Attorney for Defendant-Respondent Professional Staff
Congress/CUNY
25 West 43d Street
New York, NY 10036
(212) 354-1252

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant-Respondent Lewis Rosenberg
Ann McIntyre, of Counsel
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

FORM C CIVIL APPEAL (PP. 682-684)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

FORM C
CIVIL APPEAL PRE-ARGUMENT STATEMENT

APPEAL FROM:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 20522/85

Motions to Dismiss Complaint as against the City Defendants and the Department of Insurance of the State of New York; heard November 13, 1985, before the Honorable James H. Shaw, Jr.; Order Dismissing Complaint filed March 10, 1986; Notice of Appeal filed December 9, 1985;

Motion to Dismiss Complaint as against Lewis Rosenberg; heard December 16, 1985, before the Honorable A. D. Bernstein; Memorandum Decision dismissing the complaint filed January 2, 1986; Notice of Appeal filed January 8, 1986;

Motions to Dismiss Complaint as against the City University Defendants and the Professional Staff Congress/CUNY; heard December 20, 1985, before the Honorable Barry Hurowitz; Order Dismissing Complaint filed February 19, 1986; Notice of Appeal filed January 8, 1986.

NAMES OF COUNSEL:

For Appellant: ALICE CLISSURAS, pro se
P. O. Box 1750
Brooklyn, NY 11201
718-875-6171

For Respondents:

FREDERICK A. O. SCHWARZ, JR., ESQ.
Corporation Counsel of the City of New York
Attorney for Defendants City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York ("City Defendants")
Suzanne Lank, Asst. Corp. Counsel
100 Church Street
New York, NY 10007
212-566-6458

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for Board of Higher Education of the City of New York, City University of New York, New York City Technical College ("City University Defendants") and Department of Insurance of the State of New York
Sue Barnett Bohringer, Asst. Attorney General
Two World Trade Center
New York, NY 10047
212-488-5744

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs
Attorney for Defendant Professional Staff Congress/CUNY
25 West 43d Street
New York, NY 10036
212-972-5560

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant Lewis Rosenberg
Ann McIntyre, Counsel
420 Lexington Avenue
New York, NY 10170
212-972-5560

METHOD OF DISPOSITION IN TRIAL COURT:

Appeal from three Orders dismissing the Complaint as against all defendants.

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW:

Plaintiff brought this action against 9 defendants. One attorney represents the three City Defendants; a second attorney represents the three City University Defendants and the New York State Department of Insurance; a third attorney represents the Union; and a fourth attorney represents the Union Attorney. The causes of action include employment discrimination based on sex and religion, conspiracy as to civil rights violations, deprivation of due process rights, fraud, gross negligence, breach of contract and breach of fiduciary duty. Five motions to dismiss the complaint were made, which motions were heard at three Special Terms. The complaint was dismissed as against all defendants.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

At the first two hearings, no minutes were taken. I, appellant pro se, hereby certify that I have obtained the transcript of the last of the three hearings, for which transcript I have paid its cost.

Plaintiff intends to raise all issues on appeal, as follows: All of plaintiff's causes of action and documentation which substantiates the allegations and/or averments; arguments as to the timeliness of all causes of action; errors in the papers and arguments of defendants; errors in procedures as to attorneys for defendants and Court below; and all other relevant issues.

/s/
ALICE CLISSURAS
Appellant pro se

Dated: August 4, 1986

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- -x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- : FORM D
TRANSCRIPT INFORMATIO

CITY OF NEW YORK, et al., : CIVIL APPEAL

Defendants-Respondents. :

- -x

DISPOSITION OF COPIES: (1) to Clerk of this Court
(2) and (3) to court reporter
(4) to counsel for respondent
(5) retained by counsel for appellant.

APPEAL FROM: SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 20522/85

Judge: Hon. Barry Hurowitz, J.S.C.

Court Reporter: Mary Ellen Raftery, CSR

Appellant: Alice Clissuras, pro se

I, appellant pro se, hereby certify that I have paid the cost of the transcript to the Court Reporter and I hereby certify that I have mailed a copy of the transcript to each of the four attorneys for defendants-respondents.

DATED: August 4, 1986

/s/
ALICE CLISSURAS, Appellant pro

COURT REPORTER ACKNOWLEDGMENT

Return one copy to Clerk of the Appellate Division.

Date of Transcript: _____

Number of Pages: _____

DATED: _____

_____
Signature of Court Reporter

NOTE: THE TRANSCRIPT REFERRED TO ABOVE APPEARS IN THIS RECORD, IN VOL. I, PP. 32-66.

REC. ON AP., P. 686

PLAINTIFF-APPELLANT'S BRIEF
(PP. 686-740)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S BRIEF

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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PARTIES AND ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.) S.Ct., Kings Co. Index No. 20522/85

PARTIES AND ATTORNEYS:

ALICE CLISSURAS, Plaintiff, pro se
215 Adams Street
Brooklyn, NY 11201
(718) 875-6171

CITY OF NEW YORK)
TEACHERS' RETIREMENT SYSTEM OF NYC) "CITY DEFENDANTS"
TEACHERS' RETIREMENT BOARD OF NYC)
Frederick A. O. Schwarz, Jr., Esq.
Corporation Counsel of the City of New York
Attorney for City Defendants
File No. 85CL00642
Suzanne Lank, Asst. Corp. Counsel (State Court)
Norma Kerlin, Asst. Corp. Counsel (Federal Court)
100 Church Street,
New York, NY 10007
(212) 566-6458

BOARD OF HIGHER EDUCATION OF NYC)
CITY UNIVERSITY OF NEW YORK) "CUNY DEFENDANTS"
NEW YORK CITY TECHNICAL COLLEGE)
Department of Insurance of NYS "Insurance Departm
Robert Abrams, Esq.
Attorney General of the State of New York
Attorney for CUNY Defendants and Insurance Departme
Sue Barnett Bohringer
Assistant Attorney General
Two World Trade Center
New York, NY 10047
(212) 488-5744

PROFESSIONAL STAFF CONGRESS/CUNY "Union"
D. Nicholas Russo, Esq.
Director of Legal Affairs
Attorney for Defendant PSC
25 West 43d Street
New York, NY 10036
(212) 354-1252

LEWIS ROSENBERG "Union Attorney"
Bergadano, Zichello & Babchik, Esqs.
Attorneys for Defendant Lewis Rosenberg
Ann McIntyre
420 Lexington Avenue
New York, NY 10170
(212) 972-5560

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT :
BOARD OF THE CITY OF NEW YORK, TEACHERS'
RETIREMENT SYSTEM OF THE CITY OF NEW YORK, :
BOARD OF HIGHER EDUCATION OF THE CITY OF
NEW YORK, CITY UNIVERSITY OF NEW YORK, :
NEW YORK CITY TECHNICAL COLLEGE,
PROFESSIONAL STAFF CONGRESS/CUNY, :
DEPARTMENT OF INSURANCE OF THE STATE OF
NEW YORK, and LEWIS ROSENBERG, :

Defendants-Appellees. :

- x

STATEMENT PURSUANT TO RULE 5531

1. The index number in the Court below is 20522/85.

2. The full names of the original parties are as above and there has been no change.

3. This action was commenced in the Supreme Court of the State of New York, County of Kings.

4. The action was commenced by service of the summons and complaint on August 27, 1985, August 28, 1985, and September 3, 1985, for the nine defendants. Four of the nine defendants were re-served with an alias summons and complaint on October 29, 1985, October 30, 1985, and November 1, 1985. Two of the four defendants who were re-served were again

re-served with a pluries summons and complaint on November 27, 1985. The only answer served was the answer of defendant Lewis Rosenberg, on September 16, 1985.

5. Plaintiff has brought this action for relief for employment discrimination based on sex and religion as to her pension benefits. Defendants conspired to fraudulently conceal the causes of action which damaged plaintiff and deprived plaintiff of equal protection of laws and due process rights. The action also includes, on the part of defendants, fraud, gross negligence, and breach of fiduciary and contractual duty.

6. All defendants made motions to dismiss the complaint which motions were granted. Plaintiff's appeal is from:

a. An order entered in the office of the County Clerk of Kings County, the 19th day of December, 1985 (Shaw, Jr.), as against the City Defendants and the Defendant Department of Insurance;

b. A memorandum decision entered in the office of the County Clerk of Kings County, the 2d day of January, 1986 (Bernstein), as against Defendant Lewis Rosenberg; and

c. An order entered in the office of the County Clerk of Kings County, the 19th day of February, 1986 (Hurowitz), as against the City University Defendants and the Defendant Professional Staff Congress/CUNY.

The above three orders have been consolidated into one appeal for the purposes of the review proceedings.

7. Appeal is by the Full Record Method.

STATEMENT OF QUESTIONS PRESENTED

1. Did the Supreme Court of the State of New York, County of Kings, in three Orders, abuse their discretion and power by improperly dismissing plaintiff's complaint after reading and hearing plaintiff's claims, sets of facts, and documentation of:

a. Employment discrimination based on plaintiff's sex and religion, which was achieved by the fraudulent diminution of plaintiff's employment benefits and which was documented by plaintiff? The Courts below did not respond to the allegations of discrimination and fraud.

b. Defendants' conspiracy to fraudulently conceal the causes of action as to plaintiff's pension and legal rights, which conspiracy was documented and which conspiracy continues to date? The Courts below did not respond to the allegations of conspiracy as to plaintiff's pension and legal rights.

c. Deprivation of plaintiff's Constitutional civil rights, right to equal protection of laws, due process rights, right to counsel, and right to trial by jury? The Courts below did not respond.

d. Defendants' breach of their contractual and fiduciary duties? The Courts below did not respond.

e. Defendants' grossly negligent acts? The Courts below did not consider and did not respond.

f. Abuse of plaintiff's person, rights, and property? The Courts below did not consider and did not respond.

g. Extraordinary steps taken by defendants to prevent plaintiff from retaining legal counsel and gaining pension and legal information? The Courts below did not consider and did not respond.

2. Did the Supreme Court commit manifest and reversible errors as to the following:

a. Improper dismissal of issues of fact, on motions, without any semblance of proper hearing of the facts?

b. Failure to consider that no hearing of the issues herein has been held to date?

c. Failure to consider that there has been no investigation of the claims herein?

d. Insufficient consideration of the causes of action and of defendants' failure to present any documentation disputing said claims?

e. Failure of Court Orders to set forth nature of action and grounds for dismissal?

f. Failure of Courts to state act or acts and Law by which a four-month Statute of Limitations accrued, was required, and was applicable?

g. Failure to consider the 3-year, 6-year, continuing violations, and tolling-by-reason-of-fraud provisions of the Statute of Limitations applicable to the causes herein?

h. Courts' failure to deliver opinion and reasons as to the causes, thereby depriving plaintiff of right of counter-arguing and amending pleadings?

i. Failure to place two of the three motions on the record?

j. Tactics used to take advantage of plaintiff's forced pro se status?

k. Tactics used by defendants to prevent discovery of the causes of action and to cause expiration of time?

l. Failure to consider that defendants continue to refuse to give plaintiff copy of her records, as to which records plaintiff has documented errors therein?

m. Failure to consider that altered correspondence was used on the part of the City University Defendants and Insurance Department Defendant?

STATEMENT OF FACTS

A. AS TO AMOUNT OF PENSION (FIRST AREA OF CAUSES OF ACTION)

Plaintiff was employed as a professor at New York City Technical College ("College") for 34 continuous years from September 1, 1948, date of original appointment, to September 1, 1982, effective date of retirement. Prior to retirement, the Teachers' Retirement System of the City of New York ("Retirement System") would not answer any questions or provide any information and instructed plaintiff to go to the Professional Staff Congress/CUNY ("Union") for any needed information. Plaintiff received her first pension check on or about January 2, 1983, with no explanation and no accounting of plaintiff's moneys. Over a period of time, in response to questions, plaintiff received five diverse versions of the calculation: three from the Retirement System (pp. 346, 348, and 349),* one from the Union pension officer (p. 608), and one from the City University of New York pension officer (pp. 547-548); each of which version was intended to convince plaintiff that the pension was correct, each of which concealed the correct pension plan, and each of which included material errors and/or omissions. Plaintiff did not know at the time of retirement and until July 17, 1985, that her pension had been discriminatorily and fraudulently calculated for 29 years of service instead of for the 34 years to which she was entitled. All five versions concealed this. In addition,

---

*The page references set forth in parentheses are to pages in the Record on Appeal.

the Retirement System informed plaintiff in January, 1983, that the pension plan which applied to her was in the Administrative Code of the City of New York, Chapter B20. To support the reference to B20, the versions of the calculation were in the semblance of the plan in B20, §41.2. However, due to misstatements and misrepresentations included in the versions, the amount of the pension benefit is an amount for 29 years of service and not 34 years. What plaintiff did not know until July 17, 1985, was that her pension had been calculated according to New York State Pension Laws at the rate of 2-1/2% for 29 years, which is the rate under State Law for those with service up to 30 years. For those with 30 years of service and over, a 30-year retirement allowance is applied. Thus, not only was plaintiff deprived of five of her service years in the calculation of the pension, but she was also deprived of the 30-year retirement allowance. By all of which, plaintiff has been deprived of upwards of $10,000 annually in the amount of her pension.

Misleading plaintiff as to the applicability of B20 caused plaintiff to expend an inordinate length of time researching the complex Code since not one of the defendants would answer any questions about B20 and not one of the more than 30 attorneys with whom plaintiff consulted would give her any information about B20 or her pension benefits or her legal rights.

As to the calculation of the pension, the facts show that all of the defendants discriminated against plaintiff and

fraudulently conspired to conceal plaintiff's benefits to deprive her of her maximum and correct pension, as follows:

1. Each of the defendant Retirement System's three versions did not use a 30-year retirement allowance calculation (pp. 346, 348, and 349). Each made reference to outside service which is contradicted by the Retirement System's own certification of plaintiff's service as 34 years of New York City service (p. 347). In the letter from Mr. Jonathan Schwartz (p. 348), the additional errors include use of Increased-Take-Home-Pay accumulation after 25 years instead of the entire amount as required by Law and as used on the Report of Actuary (p. 346) and not allowing any addition to the pension for the amount of money in the Annuity Savings Fund which is depicted as a deficit when in fact it had a balance which is shown in the other two versions (pp. 346 and 349). In Mr. Wallace Sullivan's version (p. 349), the additional errors include Increased-Take-Home-Pay accumulation after 25 years instead of the entire amount and a minimum accumulation amount for individuals with less than 20 years of service. To date, the Defendant Retirement System has not stated what the pension plan is. It has not made any response to the above claims; it has not explained the differences in the three versions supplied above. The Pension System is allowed by the Court to ignore the calculation of the pension which is a fraudulent and discriminatory calculation, as the affidavits and memoranda of the Pension System show.

2. Plaintiff presented her pension questions to defendant Teachers' Retirement Board of the City of New York ("Retirement Board") and requested a hearing, to which presentation (pp. 220-265) and request for hearing the Retirement Board never responded.

3. As directed by the Pension System, plaintiff went to her Union for pension information prior to retirement. The defendant Union's pension officer gave plaintiff a worksheet

estimating the amount of the pension which was in the semblance of Code B20 and which concealed the correct retirement allowance for persons with more than 30 years of service (p. 608). In subsequent meetings and correspondence with the pension officer and Union, the correct pension allowance was never revealed to plaintiff. Not only did the pension officer conceal the 30-year allowance, she did not inform plaintiff that there is a 35-year plan. As a pension officer who is providing information to a Union member who has 34 years of City service and one year of private school service, not informing her of a 30- and 35-year plan is concealment of material fact. The Union provided the first discriminatory and fraudulent version of the pension. The pension officer used an improper form to make it appear that all Union members are counseled in the same manner, which plaintiff discovered well after retirement was far from the truth. The Union has not responded to plaintiff's claims. The Union does not distribute pension information widely to Union members; it counsels members of a large group of teachers individually which results in the most invidious form of discrimination. The Union is allowed by the Court to ignore the calculation of the pension which is a fraudulent and discriminatory calculation, as the affidavits and memoranda of the Union show.

4. Plaintiff requested information from the pension officer of defendant City University. He refused to meet with plaintiff until after retirement; at that point he sent her a version of the pension calculation which was in the semblance of Code B20 (pp. 547-548) and included errors as to plaintiff's service and loan despite the fact that he had examined the Pension System's certification of plaintiff's time as 34 years of City service and despite the fact that he had examined plaintiff's most recent Statement of Accounts which showed the amount in her Annuity Savings Fund, an amount which could not have resulted in a deficit.

City University's pension officer concealed the correct pension allowance from plaintiff in conspiracy with the other defendants.

5. Plaintiff met with the pension officer at the College who did not give her any information as to the pension other than to say that plaintiff has 34 years of service. As to the defendant College, concealment was total. The College blocked plaintiff from acquiring any information which might have assisted plaintiff even to the point of not providing the name of an earlier pension system of which plaintiff had been a member. The College discriminated against plaintiff as to all the claims herein and conspired to fraudulently deprive plaintiff of her correct payroll, employment, and retirement benefits. Additional deprivations are detailed below.

6. Plaintiff met with defendant Lewis Rosenberg ("Union attorney"), who was retained by the Union to represent plaintiff with respect to the pension issues (pp. 467-468). The Union Attorney, after viewing plaintiff's papers, did not inform plaintiff as to the nature of her case, her pension benefits, or her rights. The Union Attorney and his associate differed as tc the applicable Statute of Limitations, the former viewing it as a 4-month limitation and the latter as a 3-year limitation. After the first visit on February 15, 1983, plaintiff was not contacted by the Union Attorney until April 5, 1983, when he unilaterally disengaged himself from the case by letter (p. 469), with no clarification as to the Statute of Limitations and no information as to plaintiff's case or rights. Not only did the Union Attorney conceal the correct pension information from plaintiff, he also did not safeguard plaintiff as to the Statute of Limitations. The Union Attorney joined the conspiracy to deprive plaintiff of her correct pension benefits.

7. Since the Department of Insurance of the State of New York ("Insurance Department") is the overseer of the

Pension System, plaintiff sent a presentation of her questions to the Insurance Department (pp. 342-371). It never responded to her presentation. The defendant Insurance Department fraudulently concealed the pension benefits to which plaintiff is entitled. The discriminatory and fraudulent acts of the Insurance Department date from April 5, 1984, when plaintiff presented her claims, to June 7, 1985, and forward, when the Insurance Department in its last letter to plaintiff (p. 405) continued its fraudulent and discriminatory statements that everything had been done correctly according to law and all errors had been corrected. Nowhere has the Insurance Department shown how it arrived at the conclusion that everything had been done correctly and all errors had been corrected. A simple reference to the dates of letters in which the Insurance Department found the correct pension amount and correction of all errors would have sufficed. Instead, the Insurance Department ignores the pension amount, does not respond to any questions, and shows no evidence leading to its conclusions. (See complete file of letters as to Insurance Department, pp. 342-407 of the Record on Appeal.) The Attorney for the Insurance Department uses some of these letters to support her statements and arguments in her Affidavit and Memorandum in Support of Motion to Dismiss the Complaint (pp. 310-321). However, in using the letters, the Attorney for the Insurance Department completely eliminates all the documentation plaintiff enclosed with each letter which essentially resulted in using letters of transmittal and eliminating all the proof. The letter which she uses as her "Exhibit G," (pp. 318-320) for example, indicates at the end that there were 7 enclosures which did not appear in Exhibit G. Thus, the Attorney eliminated plaintiff's documentation of pension and service fraud. (See plaintiff's "Exhibit K" in opposition, pp. 394-404 of the Record on Appeal.) As to the final letter from the

Insurance Department, dated June 7, 1985 (Plaintiff's Exhibit L, p. 405), the Attorney for the Insurance Department uses the same letter in her Exhibit H (p. 321) with the exception that the date was altered to March 27, 1985. The Insurance Department avoids plaintiff's claims by ignoring the documentation and making generalizations to the effect that everything has been done correctly without documenting the generalization. The Court below allowed this as it was allowed for the other defendants.

The above actions of the defendants as to the calculation of the pension are discriminatory as to plaintiff on the basis of her sex and religion since the only teachers who, to plaintiff's knowledge, are receiving the 30-year retirement allowance are male and/or non-Christian teachers. All of the defendants concealed and continue to conceal the correct amount of the pension as all of their motion for dismissal papers clearly show. All of the defendants, who are in a fiduciary relationship with plaintiff and who are pension experts, conspired to deprive plaintiff of the correct amount of her pension. Total concealment of the pension facts by fiduciaries and experts could only have occurred as part of a conspiracy.

B. AS TO CREDIT FOR PRIOR SERVICE (SECOND AREA OF CAUSES OF ACTION)

The fraudulent calculation of the pension for 29 years instead of for 34 years is one of four major areas of causes of action. The second one is the fraudulent method by which plaintiff's prior service was charged and credited. The Pension System required plaintiff to pay approximately $3,500 to regain credit for her first five years at the College since she had

withdrawn her contributions from the New York State Public Pension Systems of which the faculty were members during the years 1948-1953. Of that amount, $2,500 was not placed in plaintiff's Annuity Savings Fund and as described above in A, five years of service were not included in the pension calculation despite the payment for that service. This cause of action followed essentially the same route as the first one detailed above for the calculation of the pension.

Under New York State Law, plaintiff should have been given automatic credit for her prior service since it was service in employment during which she became a member of the Retirement System. The Law, as it appears on the forms of the Retirement System (p. 400), provides, as follows:

> "PRIOR SERVICE:
>
> When you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to credit for previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In order for such prior service to be credited, you must properly fill out page three of this application.
>
> "You are entitled to immediate credit for prior service as follows:
>
> (a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retirement system or,
> (b) If it was rendered during which employment you became a member of this System.
> (c) Service credit that was transferred from any public retirement system in New York City or New York State."

The prior-service rules were concealed by each and every defendant to whom plaintiff had shown certification of her service by the Retirement System and her Statement of Accounts and this

included defendants Retirement System, Retirement Board, City University, Union, Insurance Department, and Union Attorney. After retirement, plaintiff discovered that male colleagues had been credited automatically for service at the College for years when they had not made any contributions to a retirement system. The College not only concealed the rules from plaintiff, it also misstated them, fraudulently, to prevent plaintiff from acquiring the credit to which she was entitled automatically. The College also fraudulently misstated the rules which prevented plaintiff from purchasing one year of private school teaching (pp. 359-369).

This second area of causes of action is replete with misinformation given to plaintiff by the College and given by the College to the Retirement System, among others. Since the items are too numerous to fully describe herein, plaintiff sets forth the following example: The Retirement System improperly stated that the plaintiff did not hold membership in any retirement system during the period 1951-1953 (p. 368). Not only was this not true, since plaintiff was a member of a retirement system for all of her 34 years; but also, the break in membership should not have affected credit for prior service even if it were true according to the rules for prior service which are imprinted on the forms of the Retirement System. Plaintiff provided proof of her continuous membership (p. 374), which required years of searching due to the obstructive tactics of defendants and which the defendants and the Courts below ignored. Obviously, the College had not submitted correct information to the Pension

System; and the Pension System, on the other hand, was remiss in not searching for this information at the point of plaintiff's entry into membership.

As to this second area of causes of action, the improper charging and crediting of plaintiff's prior service, the defendants do not respond to any of the above claims as all of their motion papers clearly show. The defendants do not respond to any of plaintiff's claims of discrimination, conspiracy, fraud, and breach as to this service. Plaintiff was discriminated against on the basis of sex since male colleagues had their service credited automatically; the defendants conspiratorially concealed the rules for crediting prior service with not one defendant informing plaintiff of the rules; the service was charged and credited fraudulently; and defendants breached their contractual and/or fiduciary duties to plaintiff.

C. AS TO MAINTENANCE OF STATEMENTS OF ACCOUNTS (THIRD AREA OF CAUSES OF ACTION)

The facts herein contribute to a third area of causes of action, the improper maintenance of plaintiff's Statements of Accounts, which includes many uncorrected errors, many omissions, use of two membership numbers, not putting plaintiff's account in computer, and Retirement System's refusal to give plaintiff a copy of her records. Again, since the errors and omissions are too numerous to itemize and detail herein, plaintiff sets forth the following example: On her 1970 Statement of Accounts which was sent to plaintiff for the first time in 1983, $14,985.64 is

posted as the amount of funds transferred from New York City Employees' Retirement System; the amount should be $15,675.66 as shown on the records of the two Retirement Systems (pp. 416-417). On the same Statement, the value of the Tax Deferred Annuity credits equals $6,037.38. At the bottom of the form, under Gross T.D.A., it is listed as $5,740.40. Although errors in the Statements of Accounts have been brought to the attention of most of the defendants, such as the omission on the 1981 Statement of the $2,500 purchase-of-service money, this cause of action is ignored. No defense is made. No one shows where the corrections were made. This cause of action is simply ignored by the defendants and the Courts below. Yet, plaintiff's Statements of Accounts are incomprehensible and replete with errors (pp. 350-358).

This third area of causes of action illustrates definitively the absence of defense and the weakness of the position of defendants. The defendants do not controvert any thing specifically. They do not show that what plaintiff is claiming is not true. They show no signs of having investigated any thing. Their only response is to make concluding remarks to the effect that everything has been done correctly and all corrections have been made without even an indication of to what they refer. On March 27, 1985, the Retirement System concluded that everything had been answered and everything had been done correctly (p. 274). On January 19, 1984, plaintiff sent a letter to the Executive Director of the Pension System in which she identified 25 questions which had not been completely answered (pp. 266-270).

The Executive Director responded in a letter dated May 30, 1984, in which he stated that the first five questions which had to do with the pension calculation would be answered in a separate communication from Mr. Jonathan Schwartz, Chief Actuary (p. 272). Those five questions have not been answered to date. Yet, the defendants continue to state that everything has been answered. The defendants use the same approach to all the causes of action. They simply say that everything has been calculated correctly, with no proof, and they are allowed to hide behind such false statements.

D. AS TO DISCOVERY OF THE CAUSES OF ACTION

Due to the conspiracy on the part of all defendants to conceal the causes of action, plaintiff discovered the causes bit by bit after retirement in a piecemeal fashion, the last crucial piece of which was discovered July 17, 1985, as follows:

1. After retirement, plaintiff discovered in conversing with a colleague that he had been advised by the Retirement System to withdraw his application for retirement which he had filed after 29 years of service and continue to work until he had completed 30 years of service in order to add a substantial amount to his pension benefit by virtue of the 30-year retirement allowance. This was the first time plaintiff had heard of such allowance. Then, plaintiff learned of additional instances of this and this led plaintiff to the discovery that there is a 30-year retirement allowance which had been concealed by all defendants and that she had been discriminated against on the basis of her sex and religion since the teachers she knew who were receiving the 30-year benefit were males and/or non-Christians.

2. Later, in the period after retirement, plaintiff discovered in a Union publication that the pension allowance is 2-1/2% for each year of service. This piece led to plaintiff's discovery that the pension plan applicable to her is not in the Administrative Code as the defendants had led her to believe but in New York State Law. Plaintiff could not understand the applicability of the 2-1/2% calculation because she kept multiplying it times her 34 years of service and the results were not consistent with what plaintiff had discovered earlier.

3. Finally, on July 17, 1985, plaintiff received a communication from City University in which her service at the College was certified as having ended in 1977 instead of 1982 (pp. 515-517). This led plaintiff to the discovery that her pension had been calculated for 29 years at the rate of 2-1/2% instead of for 34 years with a 30-year retirement allowance.

With the information acquired from the July 17, 1985, communication, the causes were developed for legal action and for that reason plaintiff served the summons and complaint in this action on August 27, 1985. At that point, plaintiff had discovered the discrimination against her on the basis of sex and religion; the facts pointing very clearly to a conspiracy on the part of all the defendants, attorneys, agencies, et al., to conceal plaintiff's benefits and thereby deprive her of the correct benefits; the fraudulent position that everything was correct; and the breach of contractual and fiduciary duty, a duty which required the defendants to be scrupulous in the information and responses they gave in their relationship to plaintiff..

E. AS TO LEGAL REPRESENTATION

After retirement, plaintiff expended much time and energy in trying to get answers to her pension questions. When the Union Attorney unilaterally ended his representation of plaintiff, she began seeking another attorney. She consulted with over 30 attorneys, none of whom would represent her. She sought a referral from the President of the Bar Association who referred her to a Surrogate work attorney. Since he lacked the needed expertise, he would not even discuss the case with plaintiff. Plaintiff expended a considerable length of time consulting with attorneys who not only would not give her any information but in many instances misinformed her. In refusing to represent plaintiff, the attorneys whom plaintiff consulted, in effect, make the determination as to whether or not plaintiff will have her Constitutional right to a trial by jury of her causes. They also contribute materially to the passage of time. Thus, plaintiff realized that she would have to acquire some legal knowledge in order to be able to deal with the pension problems; she, therefore, enrolled in Law School. The necessity of law school obviously had an effect on the start of legal action. However, plaintiff started this action in August, 1985, in deference to concern over applicable 3-year limitations, among other concerns. Throughout, plaintiff continued to seek representation by an attorney, to no avail. The facts which emerge from consultation with over 30 attorneys and the failure to have such representation point clearly to a conspiracy to prevent such representation.

F. AS TO GOVERNMENTAL AGENCIES

Plaintiff attempted to resolve the problems by presenting the questions to all levels of boards, commissions, and/or agencies, none of which responded and/or showed any evidence of investigation, as follows:

1. Plaintiff presented questions to the Retirement Board at its October, 1983, meeting. The Board never responded although the Chairman indicated that a response would be forthcoming after a review of the matter. The Comptroller of the City of New York sits on the Retirement Board as a member thereof. His deputy received the hand-delivered presentation for him. The Comptroller never responded to the issues herein.

2. Plaintiff presented the questions to the Insurance Department as indicated above on pages 9-11 and it never responded.

3. Plaintiff filed with the Equal Employment Commission on June 20, 1985, after earlier attempts to file had been blocked. The EEOC has not shown signs of any investigation or of even contacting the respondents.

4. The EEOC claims were filed with the New York State Division of Human Rights early in July, 1985. The State Division has shown no signs of contacting all of the respondents and no signs of any investigation. Prior to July,1985, the State Division had blocked all of plaintiff's efforts to file with it.

5. In addition to the 9 defendants herein, Robert Abrams, Esq., Attorney General of the State of New York, was served with the summons and complaint, in August, 1985. Then, his office assumed the representation of four of the defendants herein, on behalf of whom two motions to dismiss the complaint were made (pp. 301-331, 491-530). There is no evidence of investigation of plaintiff's claims of discrimination, conspiracy, fraud, and breach.

6. The Corporation Counsel of the City of New York, Frederick A. O. Schwarz, Jr., Esq., is representing three defendants herein. His office not only does not controvert the validity of the claims, but the attorney for the City admits the claims as true for the motion which is, in effect, admission of discrimination, conspiracy, fraud, breach, and gross negligence.

G. DEPRIVATION OF RIGHTS (FOURTH AREA OF CAUSES OF ACTION)

Finally, the facts herein constitute a fourth area of causes of action; namely, deprivation of rights, as follows:

1. To date, plaintiff has been denied her Constitutional due process rights. There has been no hearing of the claims herein. None of the boards, agencies, or commissions to which plaintiff applied in her attempts to resolve the pension issues would grant her a hearing. They tried to block her from filing in some instances; they did not assign a file number in some instances; and none of them investigated or held a hearing of the claims herein.

2. To date, plaintirf has not received an accounting of her pension moneys.

3. To date, not one defendant has stated what the pension plan is which applies to plaintiff and what the rules for crediting prior service are.

4. To date, plaintiff has not received a copy of her records from the Pension System, despite many requests and despite the inclusion of many errors in those records.

5. To date, plaintiff has not received a copy of her payroll and service records from the College, despite many requests and despite the fact that they have been the source of much of the misinformation which has been supplied to the Pension System. In a letter to the Retirement System, for example, the College certified plaintiff's promotion to assistant professor five years later than it actually took

place (p. 550). Plaintiff was promoted to assistant professor in 1954 and not 1959 as shown. This appears to be another item in the conspiracy to deprive plaintiff of her 34 years of benefits and another item of evidence to show that records which plaintiff is not allowed to see are the source of material errors.

6. Plaintiff has been blocked from retaining proper legal representation.

7. Plaintiff has been deprived of her right to fair and equitable treatment by all of the defendants herein and instead plaintiff has been discriminated against due to her sex and religion.

8. Plaintiff has been deprived of equal protection of laws by the defendants, attorneys, agencies, and the Court.

9. Plaintiff has been subjected to abuses of her person, time, and property. A bit of information which should have taken an instant on the part of the defendants to give required years of searching on the part of the plaintiff. To prevent plaintiff from acquiring any pension information, the Union went so far as to dismantle its library.

10. Plaintiff has been audited by the Internal Revenue Service over 12 times since 1968, the year of entry in the Retirement System.

11. Plaintiff is not in computer at Social Security and has had years of zero contributions for years during which she made maximum contributions.

12. Plaintiff rolled over Tax Deferred money from the Retirement System to a bank; the bank did not place this amount in computer and plaintiff had difficulty obtaining a statement for this money.

As shown by the above, whenever plaintiff's employment moneys are involved, plaintiff's moneys are not part of the record and many errors follow and go uncorrected.

The causes of action are numerous. Plaintiff attempted to detail them as fully as possible in her Complaint. She provided documentation of the claims as Exhibits attached to her papers in opposition to the motions to dismiss.

The defendants do not defend or argue against the causes of action. They do not state that plaintiff's pension is correct; they do not state what the pension plan is. They do not state that plaintiff's prior service was credited properly; they do not state the rules for crediting prior service. They are not required to give plaintiff copy of her records. They are not required to produce records or documentation or proofs. They rely, in the main, on a short, inapplicable statute of limitations, as to which they do not state with certainty the wrong and the date relevant thereto. The defendants acted in concert to attempt to allow the statute of limitations to expire by maintaining the fraudulent position that everything had been calculated correctly, by concealing the causes of action, by blocking the plaintiff from the acquisition of pension and legal information, and by attempting to prevent her from taking legal action.

H. THE PROCEEDINGS BELOW

The nine defendants represented by four attorneys brought motions to dismiss the complaint as against all of the defendants, as follows:

1. The motions to dismiss of the City Defendants (pp. 148-275) and the Insurance Department Defendant (pp. 301-331) were heard in Kings County, Special Term, Part I (Shaw, Jr.), on November 13, 1985.

2. The motion to dismiss of the Defendant Attorney Rosenberg (pp. 439-454) was heard in Kings County, Special Term, Part I (Bernstein), on December 16, 1985.

3. The motions to dismiss of the City University Defendants (pp. 491-530) and the Defendant Union (pp. 571-597) were heard in Kings County, Special Term, Part I (Hurowitz), on December 20, 1985.

No record was made of the November 13, 1985, hearing. Kings County is a court of record and the proceedings should have been recorded; however, plaintiff was not even given a choice of having a recorder present. Further, the records of the Chief Court Reporter show that a reporter was present in Special Term on November 13, 1985. The Special Term Clerk's office would not give plaintiff any information on the settlement of the order; thus, plaintiff was blocked from the settlement. The Court (Shaw, Jr.) signed a memorandum decision (p. 12) and a judgment (pp. 9-11) dismissing the complaint, both of which decisions do not state the nature of plaintiff's action and the causes of action and both of which decisions do not state which claims are subject to a four-month statute of limitations and why a four-month statute is applicable. The memorandum decision simply states:

> "Plaintiff's law suits * * * are subject to a four month Statute of Limitations." (p. 12, second ¶)

The judgment simply states:

> "ADJUDGED that plaintiff's causes of action against the City defendants and the Insurance Department are barred by the four-month statute of limitations; * * *" (p. 11, last ¶)

Do the above two statements mean that plaintiff's claims of employment discrimination, civil rights violations, concealment

of causes of action, fraud, breach, and gross negligence are barred by a four-month limitation? None of the causes of action is time barred and none is subject to a four-month statute.

No record was made of the December 16, 1985, hearing and again plaintiff was not given a choice and again the records of the Chief Court Reporter show that a reporter was present in Special Term on December 16, 1985. Plaintiff received a proposed order from the Attorney for Defendant Rosenberg against whom the Court (Bernstein) dismissed the complaint, for settlement on February 14, 1986; however, Special Term disclaimed receipt of such order. The Court signed a memorandum decision which was filed January 2, 1986; again plaintiff was prevented from an input in settlement. The memorandum decision states that the causes of action are concealment, conspiracy, and breach of contract and fiduciary duty; however, it then concludes:

> "Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages." (p. 21)

Plaintiff is not certain as to the intent of the above decision. Defendant Rosenberg breached his contract when he unilaterally withdrew and breached his fiduciary duty when he concealed all pension and legal information from plaintiff. He was negligent in the conduct of plaintiff's case with respect to the lapse of time and time limitations. He was a part of the conspiracy to deprive plaintiff of her employment benefits as evidenced by his acts of concealment. These causes are set forth in plaintiff's complaint as are the damages. Thus, plaintiff questions

the lack of a Court response to the causes of action and how it was decided that plaintiff suffered no damages.

A record was made of the December 20, 1985, hearing (pp. 32-66). Plaintiff received several Notices of Settlement, one for January 7, 1986, and another for January 29, 1986, and in each case Special Term disclaimed receipt of the proposed order. Again, plaintiff was prevented from participating in settlement. The Court signed an Order (pp. 29-30) on February 14, 1986, dismissing the complaint against the City University Defendants and the Defendant Union. The order is devoid of any statement as to the nature of plaintiff's action and does not mention one cause of action. In addition, the Order does not make any statement as to a reason for dismissal. On the record (pp. 61-65), the Court (Hurowitz) does not refer to any of plaintiff's causes of action and goes on to conclude that the motions to dismiss are granted on the grounds that Judge Shaw made the decision on the question of law that the four-month statute applies in this case and that the Court in this case could not go against Judge Shaw's decision. Plaintiff attempted to get a response to fraud and the statute of limitations; however, the Court would not respond to fraud (p. 65). It appears that this decision of the Court was based on insufficient consideration of the complaint and of all the motion affidavits and memoranda and exhibits. Since all of these papers are submitted on the day of the hearing, sufficient consideration could not be given to them to arrive at a decision at the end of the hearing.

All three Court decisions granting the motions to dismiss the complaint simply ignore plaintiff's claims of employment discrimination and violations of her Constitutional and civil rights. Discrimination against female City University professional instructional staff members on the basis of sex has been established by the decision in Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983). These claims are not subject to a four-month time limitation. The Courts made no decision on conspiracy, concealment, and fraud. They ignore these claims, which are documented by plaintiff, as the defendants ignored them. These claims are also not subject to a four-month time limitation. All three Court decisions did not show how the complaint failed to state claims which establish causes of action. The Courts did not consider that the defendants did not refute any of plaintiff's pension facts and that they did not present any documentation disputing said facts. All three Courts improperly dismissed issues of fact without any semblance of due process. Plaintiff's claims of documented fraud were dismissed and the issue of equitable tolling due to fraud was dismissed. All the issues of fact herein were dismissed improperly on a motion to dismiss.

The Courts dismissed plaintiff's 33-page complaint with the quick statement and no opinion that plaintiff's "law suits" are subject to a four-month Statute of Limitations and that plaintiff's causes of action are barred by the four-month statute of limitations. The Courts show no evidence of considering the timely discriminatory and fraudulent acts which are not

time barred and which continue, as follows:

(1) The final discriminatory and fraudulent decision of the Retirement System that everything had been calculated correctly as set forth in its letter of March 27, 1985 (p. 274);

(2) The final discriminatory and fraudulent decision of the Department of Insurance that everything had been calculated correctly as set forth in its letter of June 7, 1985 (p. 405);

(3) The discriminatory and fraudulent certification by City University of New York of plaintiff's service as 29 years instead of 34 years as set forth in its communication of July 17, 1985 (p. 570);

(4) The continuing discriminatory and fraudulent amount of plaintiff's pension;

(5) The discriminatory policy of the defendants as to which male and/or non-Christian teachers, who are similarly situated as to plaintiff, continue to be granted 30-year retirement allowances;

(6) The tolling of all time limitations due to the fraudulent use of 29 years for plaintiff's 34 years and the fraudulent requirement that plaintiff's College service be purchased as "outside service"; and

(7) The extraordinary steps taken by defendants to prevent discovery of the causes of action herein which elongated the time as to each phase and proceeding herein.

Plaintiff filed with the EEOC on June 20, 1985, which was timely in view of the discriminatory acts outlined above.

Further, plaintiff served the summons and complaint in this action on August 27, 1985, which was timely as to each of the discriminatory and fraudulent acts committed herein, seven of which are outlined above on page 27 herein.

ARGUMENT

PRELIMINARY STATEMENT

The Complaint sets forth causes of action for employment discrimination as a result of which plaintiff was deprived of pension benefits which male and/or non-Christian teachers received and which discriminatory policy continues to date; the Complaint sets forth causes of action for conspiracy on the part of all defendants to deprive plaintiff of her benefits by fraudulently concealing the causes of action, which conspiracy continues to date; the Complaint sets forth causes of action for deprivation of plaintiff's Constitutional due process rights as evidenced by the total absence of a hearing of the issues herein; and the Complaint sets forth causes of action for fraud, breach of fiduciary and contractual duties, and grossly negligent acts. The Courts below, in not responding to all of the above causes, contribute to them and to the deprivation of plaintiff's rights. The Courts did not identify the acts by which a four-month time bar was determined, did not identify the statute of limitations, and did not deliver opinions, reasons, and grounds for their decisions. By so doing, the Courts deprive plaintiff of countering the Courts' positions.

COUNTER-STATEMENTS AND ARGUMENTS OF THE CASE

A. As to the City Defendants (City of New York, Retirement System, and Retirement Board)

The moving papers of the City Defendants are riddled with errors, misstatements, and omissions. The attorney for the City Defendants, Frederick A. O. Schwarz, Jr., Corporation Counsel of the City of New York, by Norma Kerlin, A.C.C., and Suzanne Lank, A.C.C., in the moving papers, argues that plaintiff's first cause of action is a "failure to counsel" claim dating back to September 1, 1982 [p. 150, ¶6(a); p. 157, ¶(1)]; and that the second cause of action is a "failure to credit" claim which goes back even further to 1981. Attorneys Kerlin and Lank go on to state that the said two claims are two singular incidents unrelated to any ongoing or recent discriminatory acts by City Defendants and that, therefore, plaintiff cannot use continuing effects of past discrimination to overcome the statute of limitations (pp. 157-160, 299). In the complaint, plaintiff summarizes her first two areas of causes of action as "* * * plaintiff has been deprived of a pension benefit for 34 years of New York City service and instead has unlawfully and improperly and discriminatorily been given a pension benefit based on 29 years of service. * * *" (p. 82, ¶THIRTY-THIRD) The attorneys for the City Defendants studiously avoid the fact that plaintiff has 34 years of teaching service and her pension was calculated for 29 years of service. This was done so that the 30-year retirement allowance would not be used, discriminatorily, in the case of plaintiff and her pension was thus calculated at 2½% per year of 29 years of service.

This discriminatory and fraudulent calculation of the pension was concealed from plaintiff by all of the defendants. The concealment is evident in the March 27, 1985, letter from the Executive Director of the Retirement System in which he states that plaintiff's retirement allowance has been properly and correctly computed according to applicable laws and that this letter ended any further response to plaintiff. The concealment is also evident in the moving papers of all of the defendants. Nowhere do any of the attorneys respond to the calculation of plaintiff's pension for 29 years instead of for 34 years. Nowhere do any of the attorneys state the rules for crediting prior service. Again, they studiously avoid the fact that plaintiff's prior service should have been automatically credited. The rules for prior service were concealed and continue to be concealed by all of the defendants.

The attorneys for the City Defendants argue that plaintiff's fraud claim fails due to the fact that plaintiff's assertion of defendants' concealment relied on the presupposition that defendants had a duty to counsel plaintiff (p. 298). The issue here is that the defendants omitted material information and concealed the elements of fraud in the calculation of the pension and the crediting of prior service. The issue as to the fraud is not the presupposition of duty to counsel; it is the concealment of the fraud which was done by all of the defendants. The concealment continues as is evidenced by the moving papers of all parties herein. The discrimination continues as is evidenced by a male, non-Christian teacher who was to retire in 1985 and instead is now completing his 30th

year to retire in 1986 and earn the 30-year retirement allowance of which plaintiff was deprived for her 34 years, in addition to being deprived of 5 years of service. Plaintiff was not attempting to impose a duty on defendants to counsel her on the "intricacies of the pension plan" (p. 298); plaintiff was seeking information in order to make decisions for herself. Instead of answers, plaintiff was the receiver of misstatements and omissions of material information. The policy of discriminatory counseling, however, continues; the teacher who is in progress of continuing an extra year to his 30th year was obviously the receiver of information and counseling that was not extended to plaintiff.

Plaintiff questions the failure of the City attorneys to refer to the pension amount for accrual of the cause of action; the attorneys use "failure to counsel" and "failure to credit, only, for purposes of accrual. In this action in which the amount of the pension is the central issue, failure to refute the pension amount or even to argue it as to accrual seems to be an indication of a weak position or no position. None of the defendants address the discrimination, fraud, concealment, civil rights violations and breach as to the pension issues as the Courts below did not do also.

The attorneys for the City Defendants ignore the fact that the fiduciary Retirement System required plaintiff to purchase five years of her College service as outside service and then proceeded to eliminate those years from the calculation. Plaintiff, at the time of being required to make the purchase, did not know the rules of automatic credit. The rules were

concealed by everyone and continue so to be as is evident from all the motion papers and Court orders herein. The statute of limitations for a fraudulent act in New York is six years. CPLR §213. Since the purchase took place in 1981, the claim is not time barred, even without taking into consideration that discovery by plaintiff occurred well after retirement. The City Attorneys do not show that plaintiff was informed of the rules for crediting prior service at the time of purchase. Plaintiff documents that she was not. See pp. 254-263 of the Record on Appeal. Are the City Attorneys saying that discovery has no effect on accrual?

It is difficult to counter-argue positions that are not stated. The above arguments as to the positions of the City Attorneys are not intended as complete arguments of all the misstatements made in their papers.

B. As to Defendant Insurance Department

The counter-arguments as against the positions of Defendant Insurance Department are essentially the same as those against the City Defendants since the causes of action herein were concealed by virtue of a conspiracy of the defendants to prevent plaintiff from receiving the pension benefits to which she is entitled.

In addition, the attorney for Defendant Insurance Department, Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer, A.A.G., in the moving papers, argues that plaintiff's action is time barred by the four-months limitations period on the basis of the August 29, 1984, letter

from Mr. James B. Gardiner, Supervising Actuary of the Defendant Insurance Department, to United States Representative Stephen J. Solarz, in which he concluded that plaintiff's benefits had been calculated correctly and that all her questions had been answered; and on the basis of the January 31, 1985, letter from Ms. Mary A. Griffin, Executive Assistant to the Superintendent of Insurance Department, in which she responded to questions raised in plaintiff's December 12, 1984, letter to the Superintendent, Mr. James P. Corcoran. These two letters graphically illustrate the responses of the defendants in this action. The letter of August 29, 1984, makes no attempt to answer anything specifically. How did Mr. Gardiner conclude that plaintiff's benefits are correct? What did he review that showed that plaintiff's questions had been answered? (pp. 383-384) In his January 19, 1984, letter to plaintiff, the Executive Director of the Pension System stated that all of plaintiff's pension questions have not been answered (p. 414). Mr. Gardiner's letter is an example of the failure to respond to the specific claims involved herein. On June 7, 1985, Mr. Terence Lennon, Chief of the Life Insurance Bureau, also stated that all of plaintiff's questions have been answered and the computations corrected. What did Mr. Lennon review that showed this? When and where were corrections made? These two letters are examples of the fraudulent concealment of the pension facts. The January 31, 1985, letter of Ms. Griffin illustrates the false information disseminated by defendants. (pp. 392-393) Each of Ms. Griffin's answers is false and a concealment of

of the pension laws applicable to plaintiff. On January 31, 1985, the Insurance Department was still saying that plaintiff was not a member of a pension system for the period 1951-1953 (p. 392, second A.) Plaintiff sent proof of membership to all and to the Insurance Department on April 30, 1984 (p. 373). Plaintiff made handwritten notes on Ms. Griffin's letter to highlight the errors since the response regarding membership in a pension system in 1951-1953 indicated that no one was reviewing the matter. Ms. Griffin's response also indicated that the prior service automatic crediting as required by Law was being concealed again. Attorney Bohringer characterizes plaintiff's handwritten comments as "Refusing to accept the Department's answers * * *." Attorney Bohringer makes no comment as to the substance of Ms. Griffin's responses and no comment as to their accuracy or lack thereof (p. 325).

Further, Attorney Bohringer argues that the Supreme Court of the State of New York lacks subject matter jurisdiction to determine plaintiff's claims (pp. 326-327). Plaintiff argues that the Supreme Court has subject matter jurisdiction in this action. As to public agencies, claims against some, but not all public authorities must be brought in the Court of Claims. The question turns on the relationship between the body involved and the State. Easley v. N.Y.S. Thruway Authority, 1 N.Y.2d 374, 153 N.Y.S.2d 28 (1956). Further, subject matter jurisdiction often turns on the issues of fact. Troup v. McCart, 238 F.2d 289 (5th Cir. 1956). The issues of fact in the instant action are within the jurisdiction of the Supreme Court. Also, the

nine defendants herein are united in interest by virtue of their conspiracy in this action. The claims are numerous and complex. To separate the claims against the Insurance Department would be unjust, wasteful, and a gross disservice to justice, to the issues, and to the plaintiff. The significance of conspiracy in New York law is for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

The above arguments as to the positions of Attorney Bohringer are not intended as complete arguments of all the misstatements and concealments in her papers. Alterations of Exhibits attached to said papers are described above on pp. 10-11, herein.

C. As to Defendant Rosenberg

The Attorneys for Defendant Rosenberg, Bergadano, Zichello & Babchik, by Ann McIntyre, Esq., argue that plaintiff failed to state a cause of action against Defendant Rosenberg. On the contrary, Defendant Rosenberg breached his agreement with Defendant Union to provide plaintiff with the pension information she was seeking and to correct errors in her calculations (p. 467). Defendant Rosenberg did neither. He unilaterally withdrew his representation of plaintiff in an April 5, 1983, letter to plaintiff after seeing her only once on February 15, 1983. He concealed all pension information from plaintiff after examining her documentation which included the Report of Actuary (p. 346), the Retirement System's certification

of plaintiff's service as 34 years of New York City Service (p. 347), the February 7, 1983, version of plaintiff's pension (p. 348), and the last Statement of Accounts received by plaintiff to that date (p. 366). He did not give plaintiff a definitive statement regarding the statute of limitations. Thus, he concealed, from plaintiff, all pension information and her legal rights. He thereby joined the conspiracy to deprive plaintiff of her employment benefits, which he accomplished by concealing that plaintiff's pension and prior service had been fraudulently calculated. He breached his fiduciary duty to plaintiff by not revealing material information. He did not safeguard plaintiff as to equal protection of laws which is a Constitutional guaranty.

Plaintiff was forced to discover pension information and her legal rights over a long period of time due to the obstructive tactics of defendants. After Defendant Rosenberg disengaged himself on April 5, 1983, plaintiff could not retain an attorney even after consulting over 30 attorneys in her attempts to do so. The obstructive tactics were many and they continue to date and they constitute an abuse of plaintiff's time, person, and property, and a deprivation of plaintiff's civil and due process rights.

D. As to the City University Defendants (Board of Higher Education of the City of New York, City University of New York, and New York City Technical College)

The moving papers of the City University Defendants are riddled with errors, misstatements, and omissions. In

her affidavit in opposition to City University Defendants' motion for dismissal, plaintiff responds to and refutes and documents as many of the misstatements as possible within the constraints of such a paper. See pp. 540-542, ¶79(a) - (i) of the Record on Appeal. The arguments therein are repeated and re-attested as though fully set forth herein.

The attorney for the City University Defendants, Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer, A.A.G., shows no evidence that his office investigated plaintiff's claims of fraud; and, in addition, his office used altered evidence to support the argument that plaintiff's questions have been answered (p. 541, ¶f). Altered evidence was used by this attorney to support argument on the part of Defendant Insurance Department, which defendant is represented by the same attorney (pp. 9-11 above).

As to fraud, City University, on July 17, 1985, certified plaintiff's service at the College as having ended in 1977 instead of 1982 (5 years difference)(pp. 515-517). This communication from City University was the first time that plaintiff discovered that her pension was a 29-year pension and not a 34-year pension. Defendants' concealment prevented the discovery until July 17, 1985. Attorney Bohringer misstates the contents of this fraudulent communication and ignores the fraud. Attorney Bohringer misstates the effects of the Melani decree and that it bars plaintiff's actions which it clearly does not (p. 512, ¶IVC). The Personnel Office of plaintiff's College sent a letter to the Retirement System in 1968 in which plaintiff's date of promotion to assistant professor was stated

as five years later than it actually took place. The College apparently misinformed the Pension System about plaintiff's membership in a retirement system for the period 1951-1953, since the Retirement System shows no membership for that period (p. 551); plaintiff provided proof of membership (p. 374); Dean Bronstein of Defendant College provided an altered letter as to this; and the defendants and the Courts ignore this fraud. The College and the Retirement System are concealing all the causes of action in plaintiff's records by refusing to give her a copy of them. Clerks at the Retirement System have informed plaintiff that she has gaps in service which is untrue but they will not allow plaintiff to see the records which show this.

The College misstated plaintiff's service throughout the years which misstatements were not known by plaintiff. The College prevented plaintiff's purchase of one year of private school teaching and this was done discriminatorily and fraudulently. The College has obviously supplied the information to the Retirement System which fraudulently established plaintiff's service as 29 years instead of 34 years. This is shown clearly in City University's 29-year certification of service. The Attorney for City University Defendants ignores the fraud therein (p. 497, ¶8).

The above arguments as to the positions of the City University attorneys are not intended as complete arguments of all the misstatements made in their papers. The conspiracy, concealments, and fraud continue as are evidenced by the moving papers of said parties.

E. As to Defendant Professional Staff Congress/CUNY (Union)

In the moving papers, D. Nicholas Russo, Legal Director and Attorney for Defendant Union, argues that plaintiff's "suspicions regarding her pension allotment" are unfounded (p. 590) and that plaintiff "maintains in the instant action (that the Retirement System) miscalculated her pension" (p. 589). Attorney Russo ascribes the "unfounded" argument to plaintiff when the situation indicates the reverse. It is unbelievable that this Attorney, as all the other attorneys and the Courts herein, can make such statements without even a hint as to the correct amount of the pension, how it should have been calculated, the Pension Law which is the source of the formula, and any proof. The same applies to the crediting of prior service; not even a hint as to how it should have been charged and credited, the Pension Law which is the source of such crediting, and any proof.

Plaintiff does not maintain that her pension was miscalculated; plaintiff maintains that it was discriminatorily and fraudulently calculated. And, plaintiff documents this. The attorney for the Union goes on to say that Ms. Beryl Weinberg. the Union Pension Officer, provided plaintiff with the same consultation that she had provided to "other bargaining unit members" (p. 589). Ms. Weinberg used a form to give the appearance of so doing. However, in reality the form was inapplicable to plaintiff since it used the B20 percentages and it was obsolete. Ms. Weinberg did not follow the formula thereon for that reason. Further, it is interesting to note that this was the first version of her pension that plaintiff received and the

amount of the "normal pension" thereon was calculated as amounting to 73%, which is the percentage that the Retirement System awarded as its pension (p. 608). In a Union publication, the amount of the pension for City University faculty is stated as 2½% for each year of service, which is correct for members with service under 30 years. Using 2½% times plaintiff's 34 years does not equal the pension amount plaintiff was awarded. In addition, plaintiff's service was reduced to 29 years to avoid applying the 30-year retirement allowance. Ms. Weinberg did not use the correct pension formula for plaintiff and did not reveal the rules for the crediting of prior service. In addition, in her affidavit in support of the motion to dismiss, Ms. Weinberg states that she did not "discuss the 30-year rule with her, as I had likewise not discussed with her other irrelevancies" (p. 582, ¶10). Does Ms. Weinberg consider using 29 years instead of 34 years for the calculation an irrelevancy? Does she consider not using the 30-year retirement allowance in plaintiff's case an irrelevancy? Does she consider not informing plaintiff, who has 35 years of service with a year of private-school teaching, that there is a 35-year retirement allowance an irrelevancy? All of this was discriminatory and fraudulent on the part of the Union.

As to retaining legal counsel, Ms. Weinberg states in her affidavit that she "sent plaintiff to outside counsel NOT because I believed she had a meritorious claim but after it became obvious to me that plaintiff would never be satisfied with my answers or those provided by the pension system" (p. 581, ¶8).

The letter she sent to plaintiff informing her of the attorney retained by the Union disproves this (p. 611); Defendant Rosenberg's letter disengaging himself disproves this (p. 613). Ms. Weinberg informed plaintiff that she would retain an attorney to assist in these matters after viewing the Report of Actuary, the Pension System's Certification of plaintiff's service, and plaintiff's 1981 Statement of Accounts, among other papers.

The Union has been abusive to plaintiff. Her letters went unanswered; she was refused answers to questions; the Union dismantled its library to block plaintiff from gaining any pension information and instructed her to go to a law library for such information. All of these actions were committed discriminatorily and fraudulently and in conspiracy with the other defendants to deprive plaintiff of her pension benefits. The attorney for the Union, in his memorandum in support, does not deal with any of the pension facts and relies on a four-month statute to bar this action. The Defendant Union along with the other defendants discriminatorily and fraudulently deprived plaintiff of her benefits. They obstructed discovery of these actions. And then they all argue a short, inapplicable, un-Constitutional in this case, statute of limitations which does not apply to discrimination and fraud.

The above arguments as to the positions of the Union attorney and pension counselor are not intended as complete arguments of all the misstatements and wrongs in their papers.

POINT I

DID THE SUPREME COURT ABUSE ITS DISCRETION IN DISMISSING THE COMPLAINT

The Courts below granted defendants' motions to dismiss without passing upon the sufficiency of any of the causes of action in plaintiff's complaint. It did not find or hold that the complaint failed to state a cause of action. The Courts held that plaintiff's "law suits" or "causes of action" are barred by "the four-month statute of limitations." As to these decisions, the causes of action are not even mentioned and the reason for the applicability of the four-month statute is never stated.

The detailed presentation of the facts in this case above in this paper and in plaintiff's papers in response to the 5 motions for dismissal establishes sets of facts for employment discrimination, violations of civil rights, deprivation of Constitutional rights of due process and equal protection of law, conspiracy, concealment, fraud, breach of fiduciary and contractual duty, and gross negligence. The Courts below did not respond to these causes of action as did not the attorneys for the defendants. The plaintiff documented these issues of fact and the defendants did not show one shred of evidence in disputation. The Courts proceeded to dismiss without giving the complaint and the papers sufficient consideration, without responding to the causes with any specificity, and without delivering opinions and reasons. The Courts improperly dismissed all the issues of fact in this action

which facts were not in any manner disproved by the defendants.

The only statement made by the Courts as to a reason for dismissal is "the four-month statute." No Court below stated which act constituted accrual of the four months, among the many acts in the causes herein, and no Court below stated why the four-month statute barred all the causes herein.

POINT II

NONE OF PLAINTIFF'S CAUSES OF ACTION IS TIME BARRED

A. As to Employment Discrimination

Plaintiff was discriminated against on the basis of sex and religion in the deprivation of her employment benefits. The only persons to plaintiff's knowledge who received the 30-year retirement allowance and had prior service credited correctly are similary situated male and/or non-Christian teachers. The substance of the right to equal protection of laws is that all persons who are similarly situated be treated alike. Invidious discrimination violates the equal protection and due process clauses of both the Federal and State constitutions. See Phelan v. City of Buffalo, 54 A.D.2d 262, 388 N.Y.S.2d 469 (1976). Plaintiff was discriminated against in the groups of teachers in which she was similarly situated as to length of service and prior service credit. The discrimination resulted in a fraudulently reduced annual pension, the improper charge for prior service, and the omission of such charged service in the pension allotment.

Employment discrimination is not subject to a four-month time limitation. The Courts have consistently applied

the three-year limitations period for liability created or imposed by statute, CPLR §214(2) to claims for deprivation of civil rights. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981). Further, in Pauk, the Court held that the claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of his action. Thus, in the instant case, plaintiff's claims of discrimination, civil rights violations, and conspiracy are not time barred according to CPLR §214.

Although the Courts below made no reference to a date of accrual from which untimeliness was decided, the defendants, in their papers, determined untimeliness from a failure to counsel date some time in 1982 and from a failure to credit as to prior service some time in 1981. These were discriminatory acts definitely. However, they were not isolated and singular acts as the defendants contend. The discrimination certainly continued in the calculation of the pension and in the discriminatory acts of defendants in which they held that everything was correct. Also, as to the 1981 and 1982 acts, the discrimination was not known to plaintiff since it was fraudulently concealed.

As to discrimination and continuing wrongs, CPLR §297, Exec. Law Art. 15: Human Rights Law, Note 5, sets forth that a complaint made upon violation of the article must be filed with the Division of Human Rights within one year of alleged unlawful discriminatory practice; however, where unlawful discriminatory practice is of a continuing nature, date of occurrence is deemed

to be any date subsequent to its inception up to date of its cessation. In determining whether a discriminatory practice is of a continuing nature, the essential factor is whether the discriminatory practice has continuing impact on the plaintiff. Plaintiff's diminished pension and its continuing impact is thus a continuing wrong. In Mendoza v. State Division of Human Rights, 74 A.D.2d 508, 424 N.Y.S.2d 447 (1980), it was not required that the complaint be filed within one year of the salary increase that was the discriminatory act complained of. The continued payment of the lower salary made the discriminatory act a continuing one. In the instant case, plaintiff's diminished pension is a parallel continuing discriminatory act.

Section 218 of the CPLR provides: "* * * the right to commence the action may be revived by an acknowledgment or payment." This provision has the effect of making a pension payment a continuing wrong and continually revived. By way of additional note, the State Division of Human Rights prevented and barred plaintiff's filing a claim with that Division. The EEOC deferred the claims to the State Division which to date has made no investigation, has not contacted all the respondents, has not allowed plaintiff to speak with an investigator, and has not held a hearing.

B. As to Article 78 and Four-Month Time Limitation

The Article 78 proceeding is inappropriate for plaintiff's causes of action for discrimination, civil rights and Constitutional violations, fraud, concealment and breach. The Article 78 is a procedural device for obtaining relief previously sought by writs of certiorari for review, mandamus, or

prohibition. Such writs are not appropriate for the causes of action herein. In addition, even if an Article 78 proceeding is available, there is no basis for believing that New York courts regard this proceeding as the exclusive means for pursuing such claims, which the Court so held in Pauk, supra.

Further, as to the Article 78, "restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner * * *" CPLR §7806. Chase, Civil Litigation in New York, p. 849 (1983). In plaintiff's action, restitution for the first cause of action is upwards of $30,000. Also, in Chase, the context in which he discusses the Article 78 is one in which he sets forth the advantages of opting for litigation or for an Article 78, at the choice of the attorney.

As to Article 78, it is difficult to obtain disclosure and in plaintiff's case disclosure is vital to success on the merits. The pension plan has not been disclosed by defendants. Plaintiff's records have not been produced.

Finally as to the Article 78, the language therein states: "The only questions that may be raised in a proceeding under this article are * * *" The article does not require that the questions be raised in an Article 78 proceeding.

In the instant case, since the Courts below did not give reasons, it is difficult to know why the Courts held that plaintiff's causes of action are barred by the four-month limitation. There is no indication in the Court Orders of the action to which the limitation is applicable and no indication of the reasons for its applicability to the causes herein.

C. Fraud and the Statute of Limitations

Where the cause of action is conceived in fraud, it is a continuing wrong not barred by any statute. Greenberg v. Schwartz, 73 N.Y.S.2d 458 (1947). In Greenberg, the Court held that defendant's claim that the statute of limitations had run before the suit was commenced is without merit since the kind of wrong complained of (one conceived in fraud) is a continuing wrong and not barred by any statute. Further, a court may estop a defendant whose misconduct makes it unfair for him to hide behind the statute of limitations as in the situation where defendant conceals the cause of action from plaintiff. CPLR §201:6 Application of Art. 2: Estoppel to Assert Statute of Limitations. In the Chiappa "rule," the Court of Appeals held that the theory in the case of concealment of theft is that a defendant should not be permitted to take refuge behind the shield of his own wrong. General Stencils, Inc. v. Chiappa, 18 N.Y.2d 125, 272 N.Y.S.2d 337, 219 N.E.2d 169 (1966). In Simcuski, the Court held that equitable estoppel is applicable to relieve plaintiff from the proscriptions of the statute where defendant intentionally concealed alleged malpractice from plaintiff and falsely assured her of effective treatment. Simcuski v. Saeli, 44 N.Y.2d 442, 406 N.Y.S.2d 259, 377 N.E.2d 713 (1978). The estoppel question arises also where the defendant is a fiduciary and thus has a duty to speak. See Erbe v. Lincoln Rochester Trust Co., 13 A.D.2d 211, 214 N.Y.S.2d 849, app. dsmd. 11 N.Y.2d 754 (1961).

In the instant case, defendants concealed all the causes of action, did not respond, would not produce records, continued assertions that everything was correct, and elongated the time

as to all proceedings herein. The actions of the Courts below in allowing the defendants to hide their wrongs using the statute of limitations as a shield is contrary to all Court decisions on this, is unjust, and is unconscionable.

Finally, as to the statute of limitations, all of plaintiff's causes are not time barred. The six-year statute of limitations for fraud has not expired as to the 1981 and 1982 acts on which defendants rely. Those acts were fraudulently conceived and are thus subject to the six-year statute; and this is so even without taking into consideration that plaintiff's discovery of the fraud occurred long after retirement which would result in equitable tolling of the statute had there been such need.

CONCLUSIONS

The complaint details causes of action in four major areas. Due to the number of claims, it is impossible to include arguments as to all within the limits of this paper. Thus, as to the unargued items, plaintiff rests on the complaint and papers in opposition to the motions herein.

No one seems to be concerned that an aggrieved cannot retain an attorney which situation, in effect, deprives the aggrieved of due process and trial by jury which are inviolate Constitutional rights. To date, there has been no hearing of plaintiff's claims by any administrative or governmental agency or by any court.

Tactics are used against a pro se party to prevent that party from remedying the wrongs. Even procedural information is withheld. Papers are not filed. Records are flood damaged. Altered evidence is used. The defendants and the Court do not respond to the causes of action.

WHEREFORE, for all of the reasons set forth herein and in greater detail in the complaint and opposing papers, this Court should reverse the three Orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint and order a trial by jury of the facts in dispute herein as Constitutionally protected.

Dated, September 5, 1986.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant

TO: ATTORNEYS

ROBERT ABRAMS, ESQ.
Attorney General of the State of New York
Attorney for City University Defendants-Appellees and
Insurance Department Defendant-Appellee

FREDERICK A. O. SCHWARZ, JR., ESQ.
Corporation Counsel of the City of New York
Attorney for City Defendants-Appellees

D. NICHOLAS RUSSO, ESQ.
Director of Legal Affairs
Attorney for Defendant-Appellee Professional Staff
Congress/CUNY

BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant-Appellee Lewis Rosenberg

BRIEF OF STATE DEFENDANTS-RESPONDENTS
(PP. 741-765)

To Be Argued By
ANNE EHRENKRANZ
(5 Minutes Requested)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

- against -

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

DEFENDANTS-RESPONDENTS' BRIEF

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants-Respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Department of Insurance of the State of New York
120 Broadway
New York, New York 10271
(212) 341-2641

ANNE EHRENKRANZ
Assistant Attorney General
of Counsel

Kings County Clerk's Index No. 20522/85

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

- against -

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

DEFENDANTS-RESPONDENTS' BRIEF

Preliminary Statement

Alice Clissuras, appellant and plaintiff below, retired September 1, 1982, from her teaching position at New York City Technical College ("the College"), a respondent and defendant below (R. 72, ¶ 13).[1] In 1985, she commenced a pro se action in Special Term to challenge the amount of her retirement

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1 References preceded by "R." refer to the record filed by the plaintiff in this appeal.

benefits (R. 307, ¶ 9; R. 497, ¶ 9) In the complaint, she alleged that she had been discriminated against because of her sex and religion by the College, the Board of Higher Education of the City of New York, the City University of New York;[2] various City agencies,[3] the Department of Insurance of the State of New York (the "Insurance Department"), her union, and an outside attorney retained by her union (R. 73-74, ¶¶ 18-19).

In this Court, plaintiff appeals from the orders dismissing her complaint (R. 4-6, 13-18, 22-24).

Special Term dismissed the complaint against the Insurance Department (Shaw, J.) and the City University (Hurowitz, J.) on this ground.

Questions Presented

1. Whether plaintiff's claims against the City University and the Insurance Department are barred by the four-month limitations period applicable to Article 78 proceedings?

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2 The Board of Higher Education of the City of New York, the City University of New York, and the College will be referred to collectively as the "City University."

3 The City of New York, the Retirement Board and the Retirement System will be referred to collectively as the "City defendants."

2. Whether plaintiff has a private right of action against the Insurance Department?

Special Term did not consider this question although it was raised below.

3. Whether the Supreme Court of the State of New York lacks subject matter jurisdiction to determine plaintiff's claim for damages against the Insurance Department?

Special Term did not consider this question although it was raised below.

A. Plaintiff's Complaint

In late 1985, plaintiff commenced an action against defendants in the Supreme Court of the State of New York, Kings County. The defendants are the City of New York, the Teachers' Retirement Board of the City of New York (the "Retirement Board"), the Teachers' Retirement System of the City of New York (the "Retirement System"), the City University, the Professional Staff Congress/CUNY (the "Union"), the Insurance Department, and Lewis Rosenberg ("Rosenberg"), an attorney retained by the Union to represent plaintiff (R. 69-71, ¶¶ 2-7; R. 94, ¶ 44 (B)). The complaint seeks an accounting, compensatory damages in the

amount of $500,000 and punitive damages in the amount of $2,000,000 (R. 101).[4]

Plaintiff alleges that she was a faculty member of the College from September 1, 1948, until her retirement on September 1, 1982 (R. 72, ¶ 13). From 1948-1953, she was a member of New York State Public Pension Systems, and from 1953-1968, she was a member of the New York City Employees' Retirement System (R. 78, ¶ 24). On September 1, 1968, she transferred membership to defendant Retirement System (R. 77, ¶ 23).

In the complaint, plaintiff alleges that she began to receive pension checks from defendant Retirement System on January 2, 1983 (R. 72-73, ¶¶ 14-15). She says that the checks did not reflect the benefit for thirty years of service to which

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4 Simultaneously with commencing the present action, plaintiff filed a virtually identical complaint Clissuras v. City of New York, CV 85-318C (E.D.N.Y. December 12, 1985) (judgment and order) (Weinstein, C. J.) (R. 165-97). The District Court dismissed that complaint as to all defendants on the grounds that plaintiff's claims were barred by the statute of limitations and that no constitutional violation existed. The court, in its discretion declined to exercise pendant jurisdiction over plaintiff's state law claims. The Second Circuit Court of Appeals affirmed the decision of the district court on March 31, 1986 Clissuras v. City of New York et al., No. 85-9002. Plaintiff moved for a rehearing en banc, which the circuit denied on June 4, 1986. Then, plaintiff filed an appeal and petition for a writ of certiorari which the Office of the Clerk returned to her because there was no provision in the Rules for such a procedure. Plaintiff has sent another appeal/petition to the United States Supreme court whose status is not yet resolved.

she was entitled (R. 73, ¶ 16) and that, before retiring, she was not informed about either a thirty-year benefit or a possible thirty-five year benefit (R. 74, ¶ 19).

In addition, plaintiff alleges that the computation of her pension, which was not originally explained to her (R. 73, ¶ 15), was in error in several respects (R. 77-83, ¶¶ 23-33). For example, she says that the Retirement System has negligently maintained that she was not a member of any retirement system for the years 1951-1953, that she needlessly paid $2501.54 for those years, and that the $2501.54 has never been credited to her annuity (R. 79, ¶ 28). Plaintiff also alleges that her pension has not been calculated on the basis of her entire 34 years of teaching (R. 80, ¶ 31).

On these alleged facts, plaintiff asserts three claims against the Insurance Department. First, she claims that the Department had a fiduciary responsibility to inform her about pension options before her retirement and failed to so so. (R. 73-74, ¶ 18). Because, according to the complaint, "male and/or non-Christian teachers" were so informed (R. 74, ¶ 19) by someone not identified, plaintiff concludes that the Department

discriminated against her (R. 73-74, ¶¶ 18-19).[5] Second, she claims that, after her retirement, when she sought help from the Insurance Department, it was negligent in not crediting her with three years of membership in the New York State Employees' Retirement System on the basis of alleged proof she tendered in a letter (R. 80-81 ¶ 32(A)). Third, plaintiff claims that the Insurance Department wrongly denied her a "hearing before rendering its decision that all [computational] errors had been corrected and appropriate adjustments made in . . . [her] benefits . . ." (R. 93, ¶ 43(E)).

Plaintiff asserts four claims against the City University. First, she claims that the City University wrongly denied her counseling and help before her retirement (R. 73-77, ¶¶ 18-20). Second, she claims that the College negligently reported incorrect information to the Retirement System (R. 80-81, ¶ 32(A)-(B)). Third, she claims that, by failing to

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5 Plaintiff argues that Melani v. Board of Higher Education, 561 F. Supp. 768 (S.D.N.Y. 1983), establishes that she was a victim of sex discrimination by the City University. However, that case merely discussed whether the City University discriminated against women in the payment of salaries. Melani, 561 F. Supp. at 772. The court specifically stated that it made no findings as to any alleged discriminatory practices in such matters as hiring, promotion or fringe benefits. Id. The final consent decree (the decree at R. 511-14 is merely the proposed decree) also explicitly did not resolve whether City University may have discriminated in the payment of pension benefits. (A copy of the final order in Melani is attached hereto as Exhibit A). Thus, the Melani litigation is entirely irrelevant to the case at hand.

advise her, the College is responsible for her having made unwise choices throughout her employment. For example, plaintiff claims that "misinformation" from the College caused her to withdraw funds from State Systems (R. 81, ¶ 32(C); R. 98, ¶ 46(A)). Fourth, she claims miscellaneous acts of wrongdoing during her employment; e.g., in 1978, the College discriminatorily docked 20 days from her sick leave (R. 98-99, ¶ 46(b)), and, in 1981, the College incorrectly informed her that a course had been cancelled (R. 99, ¶ 46(C)).

B. Proceedings in Special Term

All defendants moved to dismiss the complaint (R. 148, 301, 439, 491, 571). All motions were successful (R. 9, 19, 29). The City defendants, the Insurance Department and the City University argued, inter alia, that the four-months limitations period applicable to Article 78 proceedings applied and that it had expired (R. 157-59, 328-31, 525-29). Special Term (Shaw, J.) dismissed the complaint as to the City defendants and the Insurance Department on this ground (R. 12). Special Term (Hurowitz, J.) found that the decision of Justice Shaw dismissing the complaint as to the City defendants and the Insurance Department (R. 12) represented the law of the case and dismissed the complaint as to the City University and the Union on that

ground (R. 63-64).[6] Special Term (Bernstein, J.) dismissed the complaint as to Rosenberg on the ground that the complaint failed to state a cause of action against him (R. 19-21).

ARGUMENT

POINT I

SPECIAL TERM CORRECTLY RULED THAT PLAINTIFF'S CLAIMS AGAINST THE INSURANCE DEPARTMENT AND THE CITY UNIVERSITY ARE BARRED BY THE FOUR-MONTH STATUTE OF LIMITATIONS APPLICABLE TO ARTICLE 78 PROCEEDINGS.

CPLR § 217 provides, in part:

> Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination

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6 Relying upon the decision of Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York dismissing plaintiff's federal complaint, Justice Hurowitz also found that plaintiff raised no claim of constitutional significance (R. 62).

> to be reviewed becomes final upon the petitioner. . . .[7]

Plaintiff commenced this action against the Insurance Department on August 27, 1985 (R. 307, ¶ 9). She commenced it against the City University on October 30, 1985 (R. 497, ¶ 9). With respect to the Insurance Department, plaintiff knew at the very latest in February 1985, that the Department had reviewed her file and had concluded that all errors had been corrected and that the procedures used by the Retirement System were "in conformity with applicable statutes" (R. 305-06, ¶¶ 6-7). It was at this point, at the latest, that plaintiff knew that the Insurance Department was not going to take her side in this dispute (R. 305, ¶ 6; R. 316-17). With respect to the City University, plaintiff knew in February 1983, or shortly thereafter, that the University disagreed with her position regarding the calculation of her pension benefits (R. 495, ¶ 5; R.

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7 "The 'determination' which CPLR 217 speaks of, and whose moment of finality starts the four months, applies not only to what is strictly speaking 'certiorari,' where the determination follows a quasi-judicial hearing mandated by law, but also to 'mandamus to review,' where an administrative determination involves discretion but does not require a plenary hearing. The involvement of discretion, therefore, is one strong indicator that the 'final determination' moment starts the four months." D. Siegel, New York Practice § 566, at 792 (1978) (footnote omitted). See also J. McLaughlin, Practice Commentaries, C 217:1 at p. 508 (McKinney 1972); see generally 8 J. Weinstein, H. Korn & A. Miller, New York Civil Practice, ¶ 7804.02 (1983).

501-02). Further, in January 1984, she knew that the College had given her all payroll information it could give her and that, in the College's view, it had credited her with the maximum sick leave allowable (R. 496, ¶ 7; R. 509-10).

Because plaintiff seeks the review of administrative determinations necessarily made before she received her first pension check in 1983 (R. 72-73, ¶¶ 14-15), it follows that this action is barred by the four-months limitations period. See Shields v. Hofstra University, 77 A.D.2d 867 (2d Dep't 1980); In re Greenbaum, 48 A.D.2d 969 (3d Dep't 1975). Cf. In re De Milio, 55 N.Y.2d 216 (1982) (where a probationary employee's employment is terminated and he has no right to a hearing, the four-month period begins to run from the date of his dismissal, not from the date of the refusal of his request for reconsideration).

In Greenbaum, petitioners contested their failure of the examination required for licensing as Nursing Home Administrators. Holding that the four-month period commenced when they received notice of their failure, the court rejected their argument that their petition was in the nature of a mandamus to compel:

> The petition explicitly attacks the procedures employed in developing and grading the examinations. It quite obviously seeks review of respondents' various determinations in administering those tests, yet raises no genuine question of any failure on respondents' part to perform any duty enjoined upon them by law. As a result,

> petitioners' contention that the instant proceeding is in the nature of mandamus to compel certain action, for which the appropriate time limit would commence running upon their demand and refusal of access to the examination questions and answers, is without merit.

48 A.D.2d at 969-70 (citations omitted).

In Shields v. Hofstra, plaintiff was a law student who brought a contract action challenging her academic dismissal from defendant law school. Hofstra argued that the action was properly an Article 78 proceeding and that it was time-barred. The court held that the complaint failed to state a cause of action but also agreed with Hofstra that, had the action been filed as an Article 78 proceeding, it would have been untimely:

> Assuming, without deciding, that plaintiff's claims of arbitrary and capricious conduct by defendants, although not arising out of contract, are cognizable in a proceeding pursuant to CPLR article 78, we agree with defendants that, if this action were to be converted to such a proceeding (see CPLR 103, subd [C]), the proceeding would be time barred since it was commenced more than four months after plaintiff received final notice of the law school determinations that she was academically ineligible to continue her studies and that her application for a second extension of her conditional advancement had been denied. Plaintiff's request for a reconsideration of these determinations . . . did not operate to extend the limitations period.

77 A.D.2d at 869 (emphasis added).

Thus, aside from plaintiff's lack of standing to sue the Insurance Department, which has not even allegedly deprived her of any benefits or made any erroneous calculations which

affect her benefits, her action is untimely.[8] Even if one assumes that plaintiff has a recognizable cause of action against the Insurance Department, her letters to the Department after her receipt of the Department's January 31, 1985 letter (R. 318-20, 406-07) are only contentious requests for reconsideration, which, under Greenbaum and Shields, do not extend the limitations period. Similarly, even if one assumes that plaintiff had cognizable claims against the City University, for allegedly reporting incorrect information to the Retirement System, those claims could be litigated only in an Article 78 proceeding which would have been untimely if commenced at the time she commenced this action. Her persistence in arguing the correctness of her calculations (R. 501-02, 503-04, 509-10) does not, under Greenbaum and Shields, extend the limitations period.

Plaintiff's arguments that the four-month statute of limitations does not apply are unavailing (Plaintiff-appellant's Brief at 45-48). It is clear from plaintiff's argument that she

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8 The Insurance Law specifically provides that "[n]otwithstanding the specific enumerations of the right to judicial review in this chapter, any order, regulation or decision of the superintendent is declared to be subject to judicial review in a proceeding under Article Seventy-Eight of the civil practice law and rules." N.Y. Ins. L. § 326 (McKinney 1985). Thus, any claim plaintiff might have had with respect to the Department's review of her file and its refusal to grant her a formal hearing could be maintained only in an Article 78 proceeding.

disagrees with the legislature's wisdom in prescribing a relatively short limitations period for review of administrative determinations and that she further disagrees with its wisdom in prescribing a form of proceeding for such a review which does not ordinarily involve full discovery (id. at 45-46). Essentially, plaintiff attempts to escape the statutory prescriptions by arguing that she has raised claims for constitutional violations and for fraud, which are not governed by the four-months limitations period.[9] But as to her argument that she has been the victim of constitutional violations, Justice Hurowitz specifically found, as did Judge Weinstein, that her complaint did not allege the infringement of any constitutional right (R. 62). As to her argument that she has been the victim of a fraudulent scheme on the part of defendants to withhold retirement benefits from her, plaintiff does not plead fraud with the specificity required by CPLR § 3016(b). Since there was no concealment of a theft by defendants, the cases cited by plaintiff at p. 47 of her memorandum for the proposition that the statute of limitations has been tolled are inapposite. Special

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9 Plaintiff also argues that she has been discriminated against and that her discrimination claims are not governed by the four-months limitations period (Brief at 45-46). Plaintiff's claims that defendants have discriminated against her because of her sex and religion are purely conclusory (R. 73-74, ¶¶ 18-19). In any event, as shown in Point IV, infra, her claim for sex discrimination is barred.

Term properly dismissed the complaint on the ground that the statute of limitations had expired.

POINT II

PLAINTIFF HAS NO PRIVATE RIGHT OF ACTION FOR AN ACCOUNTING AGAINST THE INSURANCE DEPARTMENT.

The Insurance Department has general supervisory powers over New York Retirement Systems. N.Y. Ins. L. §§ 4601 et seq. (McKinney Pamphlet 1984). Among other things, the Department reviews applications of retirement systems to determine whether the proposed "rates of contribution are adequate and . . . [whether] the plan of operation is sound and equitable" and, if so, it issues licenses "authorizing the retirement system to do the business described in the plan." Id. at § 4602(b).

Nowhere in the Insurance Law is there a provision allowing an individual member of a retirement system to demand an investigation of her file or to demand a hearing. Contrary to plaintiff's mistaken notion (R. 93, ¶ 43(E)), the Insurance Law does not establish or authorize a claims procedure within the Insurance Department. The Law simply creates no duty on the part of the Insurance Department to guarantee that the account of an individual member of a retirement system is properly maintained. Hence, an individual retiree cannot demand either an accounting or a hearing from the Insurance Department.

POINT III

THE SUPREME COURT LACKS SUBJECT MATTER JURISDICTION TO DETERMINE PLAINTIFF'S CLAIMS AGAINST THE INSURANCE DEPARTMENT.

As noted above, plaintiff seeks both compensatory and punitive damages from all defendants. Because the Insurance Department is an agency of the State of New York, see N.Y. Ins. L. § 201 (McKinney 1985), any action for damages against it can be maintained only in the Court of Claims. See N.Y. Court of Claims Act § 9. The Supreme Court does not have subject matter jurisdiction to determine such claims. E.g., Psaty v. Duryea, 306 N.Y. 413, 417 (1954); Hongisto v. Mercure, 72 A.D.2d 850 (3d Dep't 1979).

Plaintiff's attempts to bestow subject matter jurisdiction upon the Supreme Court (Plaintiff's Brief at 34) are unavailing. She cites no authority -- factual or legal -- to support the propositions that the Insurance Department is not a State agency and that it may be sued for damages in the Supreme Court. Her argument that it would be inconvenient for her to sue the Department in the Court of Claims while pursuing this action against the other defendants (Plaintiff's Brief at 34-35) misses the point entirely: plaintiff's convenience is not the test for subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, this Court should affirm the orders of Special Term dismissing plaintiff's complaint.

Dated: New York, New York
December 16, 1986

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants-
Respondents Board of Higher
Education of the City of New
York, City University of New
York, New York City Technical
College and Department of
Insurance of the State
of New York

ANNE EHRENKRANZ
Assistant Attorney General
of Counsel

DEFENDANTS-RESPONDENTS' (STATE DEFENDANTS)

EXHIBIT A: ORDER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT

MELANIE, ET AL. v. BOARD OF HIGHER EDUCATION

PP. 762-765

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

MELANI, ET AL.,

Plaintiffs,

-against-

THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

Defendant.

- -x

73 Civ. 5434

ORDER

GAGLIARDI, D.J.

By Order dated May 15, 1984, this court preliminarily approved a settlement decree in this action against the Board of Higher Education of the City of New York ("CUNY")[1] alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. ("Title VII"), and 42 U.S.C. §1983. Pursuant to that order, more than 23,000 current and former female members of the CUNY instructional staff were mailed copies of the proposed consent decree, along with a notice of the opportunity to file written objections to that decree and to appear at a hearing at which the court would consider those objections. On July 12, 1984, pursuant to the aforementioned notice, the court conducted a hearing with regard to the proposed decree.

The court has devoted extensive study to the proposed decree; the affidavits filed by counsel for both sides with

18. In addition to the monies disbursed under the settlement, the decree addresses the specific allegations of the complaint, as follows:

a) As to Claims 1, 2 and 13, relating to hiring practices, the decree provides for the affirmative action procedures, goals, and the review processes which afford access to the Special Master and court.

b) Claim 3, which addresses women's salary, has been expressly provided for through the procedures established in the decree for hearing and determination of salary claims.

c) Claim 4, the promotion claim, is provided for both with review processes and through the availability of the hearing procedure.

d) Claim 5, which deals with reappointment, is specifically dealt with in the procedure for hearing. Indeed, because of the compelling nature of the tenure and non-reappointment claims, they are to receive priority in scheduling under the decree's procedure.

e) Claims 6 and 7 have been rendered moot by the change in defendant's policy with respect to maternity leave and the use of leave time for pregnancy-related absences.

f) Claim 8, which relates to released time, is dealt with in the decree's §2.

g) Claim 9 was resolved by the university's agreeing to encourage participation by full-time members of the instructional staff in faculty elections, governance bodies and committees and by agreeing to provide at each college a statement describing voting rights as well as descriptions of procedures for amending governance plans. The University Affirmative Action Committee ("UAAC"), established by the decree, is to receive copies of the proposed amendments.

h) Claim 10, which relates to benefit plans, has in part become moot and has in part become the subject of other litigation. The parties have agreed that plaintiffs have not waived any claims respecting pension plans applicable to the CUNY instructional staff that they may have.

i) Claims 11 and 12, which relate to retaliation for complaining of discrimination, are dealt with within the express provision in the decree that there shall be no retaliation for participation in this lawsuit. Such claims are also dealt with in §II of the decree.

19. Provision has been made in the decree to acknowledge the contribution of time, effort, and expenses of the named plaintiffs in representing the class, by awarding them "symbolic payments." In the court's view, this provision is reasonable as to each of the named plaintiffs.

20. The remaining provisions of the decree are self-explanatory and require no substantial discussion. Counsel

(d) Moreover, plaintiffs have adequately represented the interests of all members of the class. Counsel for the plaintiffs, both before and after the decision on the salary issue, refused settlement offers that they believed to be inadequate.

(e) That approximately 25 class members, less than 1/10 of 1% of the class, have filed objections to the settlement is a significant indication of the decree's adequacy. Indeed, given the size of the class and education level of the class members, their overwhelming support of the settlement strongly supports its approval.

CONCLUSION

34. In view of the foregoing, and after considering all the factors set forth by the Second Circuit in Grinnell, and based upon the record, the court finds that the settlement of this class action upon the terms embodied in the proposed consent decree, as modified above, is fair, reasonable, and adequate and in the best interests of the members of the class in ths action and said settlement is hereby approved. Submit decree.

So Ordered.

U.S.D.J.

Dated: White Plains, New York
July 20, 1984.

BRIEF OF UNION ATTORNEY
DEFENDANT-RESPONDENT
(PP.766-779)

To be argued by
ANN TERESA MCINTYRE
(TIME FOR ARGUMENT: 10 MINUTES)

New York Supreme Court

Appellate Division—Second Department

ALICE CLISSURAS,

Plaintiff-Appellant,

against

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT LEWIS ROSENBERG

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Defendant-Respondent
Lewis Rosenberg
420 Lexington Avenue
New York, New York 10170
(212) 972-5560

ANN TERESA MCINTYRE
Of Counsel

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT
- x
ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants-Respondents.
- x

Preliminary Statement

This brief is submitted on behalf of the defendant-respondent Lewis Rosenberg, in response to the appeal by the plaintiff-appellant Alice Clissuras from the order of the Hon. Aaron D. Bernstein of the Supreme Court, Kings County, dated December 24, 1985, which granted the motion by defendant-respondent Rosenberg for an order pursuant to CPLR 3211(a)(7) dismissing the plaintiff-appellant's complaint against him. R.19[1]

[1] "R" references are to pages in the Rocord on Appeal.

Statement of Facts

Appellant's complaint (R.69-101) contains four causes of action. The claim against Rosenberg is mentioned in the Fourth Cause of Action.

Appellant alleges that she was employed by the respondent New York City Technical College from September 1, 1948 to September 1, 1982, the effective date of her retirement. (R.72) Appellant further alleges that her first pension check was dated December 31, 1982, and was received in the mail on or about January 2, 1983. (R.72) The amount of her pension was approved by the respondent Teachers' Retirement Board of the City of New York on January 20, 1983. (R. 72) Appellant claims that the amount of her pension checks was lower than she should have received from her 34 years of service. (R.73)

Appellant alleges that she was never informed of a 30 year benefit, which was concealed by all respondents, and that the calculation of her pension is incorrect. (First Cause of Action, R. 72-77) Appellant further alleges that the respondent Teachers' Retirement System of the City of New York failed to grant credit for some three years of prior service, and concealed information as to prior service credit. (Second Cause of Action R. 77-83) Appellant further alleges that the respondent Retirement System has refused to provide certain

records to appellant and has been negligent in the keeping of appellant's financial records. (Third Cause of Action, R. 83-87)

Appellant also alleges that she has been deprived of certain other rights by each of the above named respondents, (Fourth Cause of Action, R. 87-101), and alleges that respondent Lewis Rosenberg was retained by the respondent Professional Staff Congress/CUNY ("the Union"), to represent her in a legal action against the Retirement System to gain needed information and to correct any errors (R.95); that she met with respondent Rosenberg on February 15, 1983 (R.95); on March 25, 1983 she spoke with a Mr. Rothman, an associate of respondent Rosenberg, who discussed a possibly applicable four-month limitations period with her, among other things (R.95-96); and that on April 5, 1983, she was informed by letter that respondent Rosenberg would not continue as her attorney and in that letter respondent Rosenberg again expressed concern about a short limitations period. (R.96)

Respondent Rosenberg moved to dismiss the complaint for failure to state a claim upon which relief can be granted.

In a decision dated December 20, 1985, the Hon. Aaron D. Bernstein dismissed the complaint against respondent Rosenberg for failure to state a cause of action, stating, among other things, as follows:

> "It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg." (R.20)

The other respondents also successfully moved to have the complaint against them dismissed. A judgment by the Hon. James H. Shaw, Jr. dated December 18, 1985 dismissed the complaint as against respondents City of New York, Teachers' Retirement System of the City of New York and the Department of Insurance of the State of New York as barred by the statute of limitations. (R.9-11)

By order of the Hon. Barry Hurowitz, dated February 14, 1986, the complaint was dismissed against respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Professional Staff Congress/CUNY (R.29-30) on the ground that the action was barred by the four-month statute of limitations (R.63)

As to the other respondents (all others except Rosenberg) the complaint against them is a claim for an accounting and for damages, essentially a special proceeding seeking a determination that decisions concerning appellant's pension were made in violation of a lawful procedure or affected by an error of law, or was arbitrary and capricious or an abuse of discretion (CPLR §7803(3)). In essence, plaintiff seeks

review of a decision concerning the amount of her pension made over three years ago. The claims against the other respondents would, therefore, necessarily be in the form of an Article 78 proceeding, barred by the four-month statute of limitations.

Respondent Rosenberg's motion, however, was based on failure to state a cause of action against him.

Appellant lists two full pages of issues and "sub"-issues in her brief. However, as to defendant Rosenberg, the issue is solely whether the respondent's complaint successfully states a cause of action. Justice Bernstein properly concluded that it did not.

Question Presented

Does the complaint state a cause of action against respondent Lewis Rosenberg?

Justice Bernstein correctly held that the complaint fails to state a cause of action against respondent Lewis Rosenberg.

Point

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST RESPONDENT LEWIS ROSENBERG

Appellant's claims are that she has been damaged as a result of inaccurate calculation of her pension benefits (First Cause of Action, R.72-77), that she has been denied credit for prior service (Second Cause of Action, R.77-83), that the Teachers' Retirement System has refused to provide her with financial records (Third Cause of Action, R.83-87), and that she has been deprived of other rights (Fourth Cause of Action, R.87-101).

The claim for deprivation of other rights contains allegations against the other respondents and respondent Rosenberg (R.95-97).

Appellant alleges that respondent Rosenberg deprived her of certain rights, alleging that the respondent Union retained the Shapiro, Shiff, Belily, Rosenberg & Fox firm to represent her, that she met with respondent Rosenberg on February 15, 1983 and that on April 5, 1983 respondent Rosenberg sent a letter informing her that he would not continue as her attorney, and informing her that a short statute of limitations may be applicable. (R.96-97)

Appellant makes the following claim against respondent Rosenberg in subparagraph (G) of paragraph FORTY-FIFTH of her complaint:

> "By reason of all of the aforesaid, defendant Lewis Rosenberg was negligent in the conduct of plaintiff's case in that he took no steps and had no file in furtherance of plaintiff's case. He did not discuss plaintiff's case and legal rights with her. He withheld information from plaintiff as to her pension benefits and legal rights. He terminated representation of plaintiff with no direction." (R.97)

Even taking all of appellant's claims against respondent Rosenberg as true, the complaint fails to state a claim for legal malpractice against respondent Rosenberg, and must be dismissed.

In order to state a claim for attorney malpractice appellant must establish that the alleged loss was proximately caused by the attorney's negligence. As was stated by the court in Newman v. Silver, 553 F.Supp. 485 (S.D.N.Y. 1982):

> "A claim for malpractice, however, also requires a showing that the client's injury was caused by the attorney's malpractice or negligence ... This requires a showing that the result would have been altered in the underlying action had his attorney not been negligent."

553 F. Supp. at 495.

In other words:

> "Before a plaintiff can succeed in an action for legal malpractice, he must be able to demonstrate that if not for the alleged acts

> of malpractice, he would have been able to recover or proceed in a manner other than that which actually eventuated."

Becker v. Julien, Blitz & Schlesinger, P.C., 95 Misc.2d 64, 406 N.Y.S.2d 412, 414 (Sup. Ct. N.Y. Co. 1977), modified on other grounds, 66 A.D.2d 674, 411 N.Y.S.2d 17 (1st Dept. 1978). See, Freschi v. Grand Coal Venture, 564 F.Supp. 414 (S.D.N.Y. 1983); Spector v. Mermelstein, 361 F.Supp. 30 (S.D.N.Y. 1972), modified on other grounds, 485 F.2d 474 (2d Cir. 1973).

Any injuries appellant may have suffered were sustained before appellant ever met respondent Rosenberg. Appellant retired on September 1, 1982 (R.72); she began to receive pension checks on January 2, 1983 (R.72); she claims that before her retirement she was not informed about a thirty year or thirty-five year bonus or benefit and that respondents discriminated against her for failing to provide this information. (R.74)

By her own admission, appellant did not meet respondent Rosenberg until February 15, 1983. (R.95) He can hardly have caused or contributed to the failure to inform appellant of various pension benefits before her retirement on September 1, 1982.

Appellant claims respondent Rosenberg was negligent in the conduct of her case. However, appellant's allegations fail to state a claim against respondent Rosenberg because appellant has not and cannot claim that respondent Rosenberg's actions or

inactions caused her any injury, or that she would have been able to recover or proceed in any manner other than what has eventuated as a result of respondent Rosenberg's acts. Becker v. Julien, Blitz & Schlesinger, P.C., supra.

Assuming for the sake of argument plaintiff had a claim against the City and the other respondents for alleged improper pension calculations, such a claim would have to be brought in the form of an Article 78 proceeding subject to a four-month statute of limitations. (See the decision of Justice James H. Shaw, Jr. R.12) Plaintiff cannot claim that the acts or omissions she alleged against respondent Rosenberg caused her any injury by preventing her from bringing such proceeding.

Appellant alleges September 1, 1982 as the effective date of her retirement (R.72); December 31, 1982 was the date of her first check which was received on or about January 2, 1983 (R. 72); the amount of her pension was approved by the respondent Teachers' Retirement Board on January 20, 1983. (R.72)

Appellant claims that respondent Rosenberg was retained by the respondent Union to represent her in a legal action against the Retirement System to gain needed information and to correct errors. (R.95) Appellant met with respondent on February 15, 1983 (R.95); on March 25, 1983 she spoke with an associate of respondent Rosenberg who discussed a possible four-month limitations period (R.95-96); and on April 5, 1983

she was informed by letter from respondent Rosenberg that he would not continue as her attorney, and she was again warned about a short limitations period which may be applicable. (R.96) A copy of that letter appears at R.490.

Assuming the limitations period began to run on the various dates alleged in the complaint, respondent Rosenberg's alleged inaction did not preclude appellant from maintaining an action.

If the limitations period commenced on the date of retirement, September 1, 1982 (R.72), it would have expired before respondent Rosenberg ever met the appellant on February 15, 1983. (R.95)

Appellant's first pension check was received on January 2, 1983 and was dated December 31, 1982. (R.72) Using these dates to commence the running of the statute of limitations, the limitations period would have expired either April 31, 1983 or May 2, 1983, after respondent Rosenberg notified her by letter of April 5, 1983 (R.96) that he would not continue as her attorney, which letter warned appellant of the possibly applicable short limitations period. (R.490)

The amount of appellant's pension was approved January 20, 1983. (R.72) Using this date it is clear that the limitations period would then have expired May 20, 1983, weeks

after respondent Rosenberg notified her he would no longer represent her and warning of the possibly applicable short limitations period. (R.96)

It is clear that there is nothing respondent Rosenberg did or did not do which caused or contributed to appellant's injury.

Conclusion

For all the reasons set forth above, the order of Justice A.D. Bernstein dismissing the complaint against respondent Rosenberg should be affirmed.

BERGADANO, ZICHELLO & BABCHIK
Attorneys for Respondent
Lewis Rosenberg

Vincent J. Zichello
Ann Teresa McIntyre
Of Counsel

BRIEF OF UNION DEFENDANT-RESPONDENT (PP. 780-798)

To be argued by:
D. Nicholas Russo
5 Minutes Requested

Supreme Court of the State of New York

APPELLATE DIVISION – SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT PROFESSIONAL STAFF CONGRESS/CUNY

D. NICHOLAS RUSSO
Attorney and Director of Legal Affairs for Defendant-Respondent, Professional Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036
(212) 354-1252

PRINTINGHOUSE PRESS – (212) 719-3120

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PRELIMINARY STATEMENT

The plaintiff-appellant ("plaintiff") complains in this case that the Teachers' Retirement System of the City of New York ("TRS") -- a public pension system created by statute -- miscalculated her pension benefits.

She alleges in the complaint that various agencies of the City and State of New York -- Teachers' Retirement System, Teachers Retirement Board, Board of Higher Education of the City of New York, City University of New York, New York City Technical College and the Department of Insurance of the State of New York -- as well as the defendant-respondent union, Professional Staff Congress/CUNY ("PSC") and the lawyer retained by the union to investigate the merit of plaintiff's concerns about possible pension miscalculation, Lewis Rosenberg, (also a defendant-respondent), all played a part in wrongly denying her the totality of pension benefits to which she claims she is entitled.

At the time plaintiff filed the complaint in the New York Supreme Court, Kings County, she filed a virtually identical complaint against the same defendants in the United States District Court for the Eastern District of New York, alleging discrimination based on sex and religion and citing Title VII of the Civil Rights Act, 42 U.S.C. §2000e-5.

On November 14, 1985, Judge Jack B. Weinstein, in open court, dismissed the plaintiff's complaint as to all defendants. He ruled that her Title VII claims of discrimination were time-barred and that there had been no violations of the U.S. Constitution. In addition, Judge Weinstein stated that the appropriate route for plaintiff to challenge the calculation of her pension benefits was through her simultaneously filed, parallel state action; and he cited Article 78 of the CPLR.

Judge Weinstein's decision was upheld by the United States Court of Appeals of the Second Circuit on March 31, 1986.

In the instant action, the Court below dismissed the complaint against all the defendants: as to the City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York, and the Department of Insurance of the State of New York in a memorandum decision of Judge James H. Shaw, Jr., dated November 19, 1985, (Record, page 12); as to defendant Rosenberg in a memorandum decision of Judge A. D. Bernstein, dated December 24, 1985, (Record, pages 19-21); and as to the Board of Higher Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY by Judge Barry Hurowitz in open court on December 20, 1985 (Record, Transcript of the Proceedings, pages 32-66, especially at pages 61-64). With the sole execption of defendant

Rosenberg, the Court dismissed the complaint on the ground that the actions were time-barred by a four-month statute of limitations. (The action against defendant Rosenberg was dismissed because of the failure of plaintiff to have set forth a cause of action.)

This brief is submitted by defendant PSC in support of the lower Court's dismissal of the complaint on the ground that the action was not commenced within the applicable four-month statutory limitation. It is submitted furthermore in support of its position that the action should have been dismissed on the additional ground that plaintiff failed to state a cause of action against defendant PSC or, alternatively, for summary judgment.

Questions Presented With Respect To Defendant Professional Staff Congress/CUNY

1. Did the plaintiff commence her proceeding against defendant Professional Staff Congress/CUNY ("PSC") in a timely manner under the applicable statute of limitations (CPLR §3211 (a)(5))?

   The Court below held that the action was time-barred by the applicable four-month statute of limitations.

2. Did the plaintiff fail to state a cause of action against defendant PSC (CPLR §3211 (a)(7))?

   The Court below did not address this issue.

3. Should summary judgment be granted to PSC (CPLR §3212)?

   The Court below did not address this issue.

STATEMENT OF FACTS

Plaintiff retired as a member of the faculty of New York City Technical College of the City University of New York as of September 1, 1982.

At all times relevant to this proceeding, defendant PSC was the unincorporated certified collective bargaining agent (union) of the instructional staff at the City University of New York (hereafter "CUNY") of which New York City Technical College was one constituent college. CUNY was a public institution created pursuant to Article 125, §6201 et seq., of the New York State Education Law. Inasmuch as plaintiff held the title of Professor, she was a member of the PSC bargaining unit, thereby covered by the terms of the union contract.

Section 470 of the New York State Retirement and Social Security Law made amply clear that at all times relevant to this case the union, PSC, and the public employer, CUNY, were prohibited from negotiating about matters of pension.

The New York City Teachers' Retirement System (hereafter "TRS"), which plaintiff maintains in the instant action miscalculated her pension entitlement and from which allegation flows her complaints against defendant PSC (and the other defendants as well), was the public retirement system established

pursuant to Title B of Chapter 20 of the Administrative Code of the City of New York.

Plaintiff met with defendant PSC's Director of Staff Relations Beryl Weinberg prior to plaintiff's retirement on September 1, 1982 (Record, page 580). PSC's Ms. Weinberg provided plaintiff with the same consultation that she had provided to other bargaining unit members contemplating retirement, regarding a projection of what her pension allotment would be, based upon information provided by plaintiff as to plaintiff's age and length of creditable service.

After plaintiff commenced receiving payment of her pension benefits on or about January 2, 1983 (Record, page 72:¶14 of plaintiff's complaint), she again met with defendant PSC's Ms. Weinberg.

PSC's Ms. Weinberg, after receiving permission from the union's executive director in or about February 1983 (Record, page 580), retained outside legal counsel, to wit defendant Lewis Rosenberg, who was to meet with the plaintiff and, if he deemed her allegations legally actionable, to institute a suit on her behalf for which the PSC would assume the legal fees.

When plaintiff became dissatisfied with the professional judgment of defendant Rosenberg in or about April of 1983,

defendant PSC decided it would no longer entertain plaintiff's unfounded suspicions regarding her pension allotment, and PSC refused to deal with her further on this matter (Record, pages 581-2).

Plaintiff commenced this action on defendant PSC by the service of a summons and complaint on October 29, 1985 (Record, pages 146-7 and 574).

ARGUMENT

POINT I

PLAINTIFF's ACTION IS BARRED BY THE STATUTE OF LIMITATIONS

If plaintiff stated a cause of action -- a matter challenged by defendant PSC in Point II, infra -- and if summary judgment is not granted (in accordance with the reasons set forth in Point III, infra), then plaintiff's action is barred by the statute of limitations.

In June, 1983, the United States Supreme Court in Del Costello v. Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476, held that the six-month limitation period governs cases against a union based on the union's alleged breach of the duty of fair representation. In so holding, the Supreme Court found applicable the six-month statute of limitations found in Section 10(b) of the National Labor Relations Act with respect to a private sector duty of fair representation charge before the National Labor Relations Board.

Since the Del Costello decision was handed down, the New York State Courts have consistently relied upon that case and applied the six-month statute of limitations to suits against labor unions. See: Alexander v. Mt. Sinai Medical Center, 96

A.D.2d 488, 465 N.Y.S.2d 201 (1st Dept., 1983); Lohier v. District 1199, 96 A.D.2d 884, 466 N.Y.S.2d 39 (2nd Dept., 1983); Taylor v. St. John's Episcopal Hospital, 96 A.D.2d 886, 466 N.Y.S.2d 43 (2nd Dept., 1983); Gerber v. Amalgamated Transit Union, 124 Misc.2d 306, 476 N.Y.S.2d 728 (Sup.Ct., Onondaga, 1984); and Callens v. Simmons Machine Tool Corp., 110 A.D.2d 994, 488 N.Y.S.2d 282 (3rd Dept., 1985).

Of particular significance is the case of Mohan v. United University Professions, 127 Misc.2d 118, 485 N.Y.S.2d 404 (Sup. Ct., Chautauqua, 1984), because there the Court applied Del Costello to a suit brought by a professor of the State University of New York (a public university like the City University of New York) against his faculty union (an affiliate of defendant PSC).

Recently, the Appellate Division, Third Department, applied the six-month statute of limitation period in a suit by a disgruntled employee alleging a breach of the duty of fair representation by his union. The court, likewise, rested its decision on Del Costello. Ferri v. Public Employees Federation, 115 A.D.2d 814, 495 N.Y.S.2d 759 (1985). And again in September of 1986, the Fourth Department of the Appellate Division, applied the six-month period to a math teacher seeking to sue her union. Baker v. Board of Education of West Irondequoit, 507 N.Y.S.2d 340.

Defendant PSC submits, however, that the more appropriate filing period is four months, not six months. The analogous provision of state law to the federal law's §10(b) of the National Labor Relations Act (which provides the six-month filing period for unfair labor practice allegations) is the rule of the New York State Public Employment Relations Board ("PERB") that sets down the four-month filing period for improper practice charges filed before it, to wit 5NYCRR, §204.1(a)(1). The purposes and jurisdiction of PERB over fair representation matters, inter alia, in the public sector in New York are parallel to that of the NLRB in the private sector. Therefore, the appropriate statute of limitations period to fair representation actions in the New York State public sector should be the four-month period within which such charges must be filed at PERB; this would be similar to the Del Costello rule that the six-month period is applicable in the private sector for cases filed with the NLRB in accordance with its filing period.

The argument for a four-month filing period is made all the more compelling by the fact that the U.S. Supreme Court in Del Costello recognized the desirability of having the same statute of limitations period for suits brought against both the employer and the union, as here. Since, under Article 78 of the CPLR, suits against public employers -- as is the City University of New York and the other government agency defendants in the

instant case -- must be commenced within four months and since the PERB filing period is likewise four months, the more appropriate filing period in the instant case for a suit against a union should be deemed to have been four months.

In either event, the defendant PSC's Motion to Dismiss must be granted because plaintiff did not commence her action until well beyond either the four-month or the six-month statutory period, not until October 29, 1985. The last possible time that the defendant PSC, even for argument's sake, could have harmed plaintiff was in April, 1983, when PSC refused to provide plaintiff with a second lawyer, since the first lawyer that it provided to her -- defendant Rosenberg -- had declined to represent her. Nor has plaintiff established a continuing harm since the U.S. Supreme Court has held that an allegation of discrimination does not become a continuing violation by virtue of its adverse continuing effect on an employee's benefits. See United Airlines v. Evans, 432 U.S. 553 (1977).

POINT II

PLAINTIFF FAILS TO STATE A
CAUSE OF ACTION AGAINST DEFENDANT PSC

It is black letter labor law that a union owes a duty of fair representation to its bargaining unit members and that duty exists by virtue of the union's exclusive representation of those employees. Substantively, the duty applies both to a union's negotiation of new contract terms and to its enforcement of existing contract terms. It is a duty, however, that exists only by reference to the employer. For the union exists solely to negotiate about and to enforce agreements with the employer regarding terms and conditions of employment.

In the public sector involving employees of public employers (as is the City University of New York by virtue of §6201 et seq. of the New York State Education Law), that which is bargainable by or off limits to the parties is sometimes set fortn in law. Pertinent to the instant case is §470 of the New York State Retirement and Social Security Law, which prohibited public employers from negotiating about retirement benefits with public employee unions for a defined period, including the period relevant to this case. This proscription included the time period between plaintiff's visit to PSC's Ms. Weinberg, which occurred prior to plaintiff's retirement, and through and beyond the time when defendant PSC retained outside counsel,

defendant Rosenberg, to examine the merits of plaintiff's discontent over the amount of her pension entitlement.

In any event, the New York City Teachers' Retirement System was a separate, legally constituted entity (established pursuant to Title B of Chapter 20 of the New York City Administrative Code); and since plaintiff's employer, CUNY, and union, PSC, were prohibited from negotiating about pensions, and since defendant PSC had neither legal authority nor control over any of the actions of the pension system, the defendant PSC owed no duty to plaintiff regarding any allegations of miscalculation, which is the underlying gravamen of her complaint. Nor did the union play any part in the actions taken by the pension system vis-a-vis plaintiff.

Therefore, since defendant PSC's fair representation duty to plaintiff flowed only in the direction of the employer-university, regarding the terms of their collective bargaining agreement and since defendant PSC played no role in the pension system's allocation of plaintiff's retirement benefit, plaintiff has asserted no viable action against defendant PSC, regarding possible miscalculations of pension entitlements made by the independent public retirement system, TRS. Accordingly, plaintiff has failed to state a viable claim against the defendant-union, PSC.

POINT III

SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANT PSC

Even if defendant PSC owed a duty to plaintiff regarding the latter's allegation of a miscalculation of her pension entitlement made by the separate public pension system, then defendant PSC discharged that duty by retaining outside counsel to evaluate and pursue, if appropriate, the merits of plaintiff's dissatisfaction with the amount of her pension entitlement.

If the lawfirm or lawyer-defendant thereof committed any negligence or malpractice -- not an allegation asserted by this defendant -- defendant PSC is not responsible as a matter of law because the said lawfirm and lawyer were not agents or employees of the defendant PSC but rather served in the nature of an independent contractor.

Therefore, since defendant PSC went above and beyond its duty and retained outside legal counsel for plaintiff and since defendant PSC could not be held culpable as a matter of law for any negligent act of said outside counsel, the relief requested, summary judgment, should be granted in favor of defendant PSC.

CONCLUSION

For the foregoing reasons, the appeal of plaintiff-appellant Alice Clissuras should be denied in all respects, with costs and disbursements granted to defendant-respondent Professional Staff Congress/CUNY.

Respectfully Submitted,

D. Nicholas Russo
Attorney and Director of Legal
Affairs of Defendant Professional
Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036
(212) 354-1252

PLAINTIFF-APPELLANT'S REPLY BRIEF
TO STATE, UNION ATTORNEY, AND
UNION DEFENDANTS-RESPONDENTS
(PP. 799-817)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

PLAINTIFF-APPELLANT'S REPLY BRIEF

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

PLAINTIFF-APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

Plaintiff-appellant submits this reply brief to respond to the brief of defendants-respondents City University (Board of Higher Education of the City of New York, City University of New York, and New York City Technical College) and Department of Insurance; the brief of defendant-respondent Professional Staff Congress/CUNY; and the brief of defendant-respondent Lewis Rosenberg. The City defendants-respondents (City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York) have not submitted a brief to date.

RESPONSES TO BRIEFS

A. COMBINED RESPONSES REPLYING TO ALL OF THE SUBMITTED BRIEFS OF DEFENDANTS-RESPONDENTS

1. Plaintiff completed 34 years of service at defendant College. Her pension was calculated at the rate of 2½% for 29 years.

This is fraudulent. Plaintiff was falsely deprived of 5 service years and the 30-year entitlement. Plaintiff documented the fraud by showing 5 fraudulent versions of the pension given to her by the Pension System, City University, and the Union (Rec. on Ap., pp. 213-215, 501, 608).

Not one defendant, in any paper to date, even mentions this claim. See all papers on the record. This constitutes concealment of cause of action. Not one attorney has addressed this claim. See all submitted briefs. Not one Court has addressed this claim. See all the orders below and the orders of the Federal Courts.

The concealment of this cause of action by each and every defendant establishes a fact pattern for conspiracy to defraud since that is the only basis upon which total concealment of the cause of action could have occurred.

This claim deprives plaintiff of her Constitutional right of equal protection of the laws on the bases of her sex and religion. Not one defendant has provided a non-discriminatory reason for a 29-year pension in the place and stead of a 34-year pension. The discrimination continues.

Male and/or non-Christian teachers are receiving full pensions which include 30-year entitlements.

Not one defendant has provided any argument to dispute this claim; no one has provided any documentation to dispute this claim; no one has stated that the pension plan involved here is the Career Pension Plan and that the Pension Law providing for that Plan is being violated by the defendants. It is inconceivable to plaintiff that the discriminatory and fraudulent determination of her pension, which is the focal claim in her complaint is not even mentioned, considered, or addressed by the defendants and that the Courts below improperly dismissed the complaint without even mentioning this claim. This claim involves issues of fact which are not subject to dismissal without trial. CPLR §3211(c).

The Courts below and the attorneys for defendants-respondents state that plaintiff's claims are barred by the four-month statute of limitations (plus in several instances a failure to establish cause of action). No one states the wrong from which the cause of action accrues. The Courts do not state it and the attorneys do not state it. What is the wrong which starts the four-month statute? Is it the discrimination? Is it the fraud? Is it the conspiracy? Is it the concealment of the causes of action? Is it the deprivation of Constitutional rights? Is it the breach of contract? Is it the breach of fiduciary duty? The Courts and the attorneys do not address or respond to any of these claims, all of which are documented by plaintiff. The defendants have not shown

that plaintiff knew that her 34 years of service were reduced to 29 for the pension at any time prior to July, 1985. Plaintiff documents the time when she discovered this claim (Rec. on Ap., p. 570). Prior to July, 1985, defendants were providing fraudulent versions of plaintiff's pension which were in the semblance of a 34-year pension. They also fraudulently stated that the pension plan was the plan contained in the Administrative Code of the City of New York, Chapter B20, §41.2. It was much later that plaintiff discovered that the plan was the Career Pension Plan. The Courts and the defendants do not respond to this.

Each and every defendant concealed each and every cause of action. Plaintiff discovered each cause well after retirement. With the discovery of the 29-year factor in July, 1985, plaintiff was able to determine the method by which the amount of pension was calculated. She immediately brought this legal action, in August, 1985.

The Courts below and the attorneys for defendants-respondents do not state the wrong from which the four-month statute begins to run because it would then be patently clear that there is no four-month statute which applies to discrimination, fraud, concealment, Constitutional guaranties, conspiracy, and breach, as to all of which claims the statute of limitations has not expired. Albeit it is inapplicable, the July, 1985, discovery is even within the four-month statute.

Defendants conspired to conceal the causes of action and to prevent plaintiff from retaining an attorney. They

blocked plaintiff in all of her attempts to obtain information. They elongated the time throughout this matter by their concealments and conspiracy and then, their only defense is an inapplicable four-month statute which they do not ascribe to a particular wrong.

Plaintiff is not an attorney and no one appears to take note of or to respond to the deprivation of her Constitutional right to legal representation.

2. As to her second cause of action, plaintiff completed 34 years of service at defendant College. She was required to purchase a portion of those years as "outside service." Despite the purchase, the years were not included in the calculation of plaintiff's pension.

This second claim involves fraud, discrimination, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach, for all of the reasons stated above for claim "1." This second claim took the same route as claim "1" and the statements made above for claim "1" apply here to claim "2" as though they were fully repeated here. The law providing for service credit was violated. The defendants do not even mention this claim and the law governing service. The Courts below were also silent as to this claim.

The two claims set forth above are substantial claims. The Courts and the defendants do not address the two claims in any manner. The defendants do not state the pension plan and do not state the rules for service. The Courts do not state

the causes of action and dismiss unspecified causes which include many issues of fact.

Plaintiff sets forth the above two claims as illustrations of the failure of the defendants-respondents to respond, to counter, to dispute, and to provide documentation. They failed to do so as their briefs clearly show, not only for the above two claims but also for the many other claims in the complaint. The Courts below did not respond and did not require the defendants-respondents to make any response.

B. RESPONSES REPLYING TO BRIEF OF DEFENDANTS-RESPONDENTS CITY UNIVERSITY AND DEPARTMENT OF INSURANCE

The brief submitted by Robert Abrams, Attorney General of the State of New York, by Anne Ehrenkranz, A.A.G., attorney for defendants-respondents City University and Department of Insurance, is so full of misstatements, errors, and misinterpretations that it is difficult to deal with all of them.

1. At no point does Attorney Ehrenkranz respond to, counterargue, disprove, or provide any documentation in response to plaintiff's claims of discriminatory and fraudulent calculation of pension and crediting of prior service.

2. At no time, in any paper, has plaintiff claimed that the Department of Insurance had a fiduciary responsibility to inform plaintiff about pension options before retirement and

that it was negligent in not crediting plaintiff with New York State Pension years. As plaintiff's papers clearly show, plaintiff claims that the Department of Insurance was discriminatory and fraudulent when in the final letter, dated June 7, 1985, it was stated that all errors had been corrected and adjustments had been made in the computation of plaintiff's benefits (Rec. on Ap., p. 405). Nowhere in all the correspondence with the Insurance Department is there an explanation to support that statement. See entire correspondence with Insurance Department (Rec. on Ap., pp. 342-407).

Further, plaintiff claims that the Insurance Department, in conspiracy with the defendants, concealed the causes of action after retirement. It concealed that plaintiff's pension was a 29-year pension instead of a 34-year pension; it concealed that plaintiff's service was credited fraudulently; it concealed the fraud.

Attorney Ehrenkranz states that plaintiff's letters to the Insurance Department after receipt of the Department's January 31, 1985 letter are only "contentious requests for reconsideration" (Ehrenkranz Brief, p. 12). It appears that Attorney Ehrenkranz has not read the January 31, 1985 letter which consists of untrue, undocumented, and violative statements; (Rec. on Ap., pp. 392-393); and she has not read plaintiff's response of February 25, 1985, which provides documentation in 7 enclosures (Rec. on Ap., pp. 394-404) and which could hardly be characterized as a "contentious request for reconsideration."

Plaintiff discovered that her pension had been calculated for 29 years in July of 1985. This had been concealed by the Insurance Department up to and including its final letter of June 7, 1985, and the Defendant Insurance Department continues this concealment as is patently clear from all the papers herein including Attorney Ehrenkranz's brief. This concealment was total on the part of all defendants and it continues to date. Further, it was committed as part of defendants' conspiracy to deprive plaintiff of her pension benefits.

As to the fraud, instead of disproving it, Attorney Ehrenkranz states that plaintiff does not plead fraud with the specificity required by CPLR §3016(b). In the complaint, plaintiff set forth the fraud in great detail. Every incident and claim of fraud has been documented by plaintiff, which documentation is included in the Record. Not one defendant has presented even one shred of documentation to disprove the claim of fraud.

Attorney Ehrenkranz continues to err in her brief when she states in her brief on p. 15 that plaintiff uses as the standard for subject matter jurisdiction, as to the Supreme Court and the Insurance Department, plaintiff's convenience. After reading plaintiff's arguments on pp. 34-35 of Plaintiff's Brief, it can only be ludicrous to find that plaintiff's convenience was the basis of the arguments, by any stretch of imagination or interpretation. How Attorney Ehrenkranz came to

a conclusion of plaintiff convenience and missed plaintiff's arguments for serving justice and being mindful of the Court's time is beyond comprehension.

3. As to the City University Defendants, their concealment of the 29-year pension and improper service credit is continued in Attorney Ehrenkranz' brief. On its records, City University has plaintiff retiring in 1977 and in 1982. The Attorney not only does not disprove this, but she also does not respond to any of these claims.

The defendant College is a principal actor in plaintiff's case, as plaintiff's employer. Here, the Attorney does not attempt to respond to the wrongs committed by the College. The College refuses to give plaintiff a copy of any of her records. In the lower Court, altered evidence was used to falsely support an argument as to said records (Rec. on Ap., pp. 541-542, ¶f). Refusal of the records is a violation of law, to which no one responds.

In a letter dated February 23, 1983, the City University Pension Officer sent plaintiff a fraudulent version of her pension. Attorney Ehrenkranz describes this on p. 9 of her brief as the time when plaintiff knew that the University disagreed with her position regarding the calculation of her pension. In February of 1983, plaintiff had no knowledge of the concealments as to pension and service. Plaintiff did not discover all of the pension items until July, 1985. The Pension Officer was concealing, not disagreeing; however, plaintiff was

not completely aware of this until much later. For plaintiff's arguments as to the Pension Officer's letter, see Rec. on Ap., pp. 533-534.

4. On p. 7 of her brief, Attorney Ehrenkranz states that Special Term (Shaw, J.) dismissed the complaint on the ground that the four-month limitation applicable to Article 78 applied and that it had expired. Justice Shaw does not state this in his Memorandum Decision (Rec. on Ap., p. 12) and he does not state this in his Judgment (Rec. on Ap., pp. 9-11). Nowhere does Justice Shaw state the nature of plaintiff's action and the claims he dismissed. Nowhere does he mention Article 78. There is no indication in Justice Shaw's decision of the reason for the applicability of a four-month Statute of Limitations.

The order signed by Justice Hurowitz does not state the nature of the case and the claims; there is no mention of a four-month statute; he grants dismissal without any reason.

Paragraphs 1-4 above do not constitute a complete reply to the Brief of Defendants-Respondents City University and Department of Insurance.

C. RESPONSES RELYING TO BRIEF OF DEFENDANT-RESPONDENT PROFESSIONAL STAFF CONGRESS/CUNY (UNION)

To begin to respond to the brief of the Defendant Union becomes an overwhelming task due to the volume of response

required by this brief primarily due to its omissions. Attorney Russo does not even mention fraudulent pension amount and service, conspiracy, and concealment of the causes of action.

The Pension officer of the Union gave plaintiff a fraudulent version of her pension calculation. It was in the form of the formula in Code B20; it concealed the correct plan; and it did not provide for the 30-year allowance. The Union version arrived at 2½% for 29 years of normal pension by using an obsolete, inapplicable form to conceal the fraudulent use of 29 years. According to the correct plan plaintiff should have received 2½% for 34 years, plus a 30-year allowance. The attorney for the Defendant Union does not mention this claim at all.

Plaintiff's service of 34 years was credited fraudulently in the pension calculation. The Union Pension officer concealed the rules for crediting service. The attorney does not mention this claim at all.

The pension and service claims constitute concealment of causes of action, a claim to which the attorney does not respond in his brief.

All of the defendants acted in a conspiracy to deprive plaintiff of her pension benefits. In a civil conspiracy, the essence of averment of a conspiracy is the joining of all defendants and holding them responsible for the acts of each other. Connor v. Bryce, 1750 N.Y.S. 94, 95-96 (1918). The Union is joined to the defendants by virtue of the conspiracy.

Further, the Union does not provide information to the members widely. Members are informed individually of their

entitlements, a practice which leads to the most invidious form of discrimination.

The Union pension version was the first one received by plaintiff and it was received prior to retirement. In his brief, Attorney Russo states, on p. 13, that the Union owed no duty to plaintiff regarding her claims of miscalculation and that the Union played no role in the pension system's determination of the pension. He, then, concluded that plaintiff failed to state a viable claim against the Union. By so stating, in effect, he characterizes fraud as a miscalculation and conspiracy as a "no role." He also does not respond to concealment and discrimination.

As to breach of duty of fair representation, Attorney Russo deals with this by discussing the merits of the applicable six- or four-month statute of limitations arriving at the conclusion that plaintiff's action was commenced well after April, 1983, when the Union Attorney unilaterally withdrew his representation; thus, both limitations barred plaintiff's suit. (Russo's Brief, p. 11) Correspondence between plaintiff and the Union regarding plaintiff's claims continued after April, 1983, and into 1984 (Rec. on Ap., pp. 614-633). The letters show clearly that the causes of action herein were concealed by the Union throughout. They continue to be concealed as is evident from Attorney Russo's brief. The conspiracy continues.

To avoid extending this reply unduly, I set forth one misstatement as illustrative of such statements in place of a complete listing. On p. 6 of his brief, Attorney Russo

states that plaintiff became dissatisfied with the Union attorney in April of 1983 and that the Union at that point decided to stop indulging plaintiff's unfounded suspicions regarding her pension. First of all, the Union attorney withdrew unilaterally. Second, if plaintiff's claims are unfounded suspicions, it should be a simple matter to prove this by presenting the pension plan. The President of the Union had told plaintiff that he would send her a copy of the plan but he never did so. Third, the Union did not stop indulging as of April, 1983, and did not consider plaintiff's claims unfounded suspicions. The letters from the Union disprove this (Rec. on Ap., pp. 618-633).

D. RESPONSES REPLYING TO BRIEF OF DEFENDANT-RESPONDENT LEWIS ROSENBERG

Again, responding to the brief of a defendant-respondent becomes an overwhelming task due to the volume of response required due to omissions and misstatements.

Attorneys Zichello and McIntyre do not even mention fraudulent pension amount and service, conspiracy, and concealment of the causes of action.

Plaintiff met with Defendant Rosenberg only once. At that meeting, Defendant Rosenberg viewed plaintiff's Report of Actuary, second version of pension by the Chief Actuary, purchase of service papers, and several Statements of Accounts. Defendant Rosenberg concealed the fraudulent pension amount, the

improper purchase, and all other pension and legal information as to plaintiff's rights.

On p. 8 of their brief, the Attorneys state that since plaintiff claims she was not informed about a 30- or 35-year bonus prior to her retirement, then Defendant Rosenberg could not have caused the failure to inform. First, plaintiff has never claimed that Defendant Rosenberg failed to inform plaintiff prior to retirement. Second, the 30- and 35-year pensions are just that; pension calculations for those years with additional percentages for length of service over 30 years. Defendant Rosenberg failed to inform plaintiff after retirement that her pension had been fraudulently calculated and that she had improperly been required to purchase city service as outside service. By these concealments, Defendant Rosenberg joined the conspiracy to deprive plaintiff of her pension and thus became joined in the wrongs.

Plaintiff is not an attorney. In February of 1983, if Defendant Rosenberg mentioned an Article 78, plaintiff had no background to understand such a proceeding and to know of her legal options and causes. In his letters, Defendant Rosenberg made reference to a short Statute of Limitations which may be applicable. However, from February, 1983 to April 5, 1983, he took no action which is indicative of little concern for the expiration of a short statute. Moreover, his Associate Rothman informed plaintiff of his view of the applicable statute as a 3-year limitation. On pp. 3 and 9 of their brief, the Attorneys state that Associate Rothmen discussed a

possibly applicable four-month statute with plaintiff and the attorneys refer the reader in both instances to pp. 95-96 of the Rec. on Ap. The Record shows on those pages that Associate Rothman viewed the limitations period as three years.

Defendant Rosenberg disengaged himself in April of 1983. He did not inform plaintiff of her pension and legal rights. He did not protect plaintiff in any meaningful way as to a possibly applicable statute of limitations. Further, after this experience with Defendant Rosenberg, plaintiff was not able to retain an attorney despite consulting with over 30 attorneys. This deprived plaintiff of her Constitutional right to counsel.

The Attorneys here make reference to several dates early in 1983 by which the 4-month statute of limitations would be deemed to have expired.

What these Attorneys, as well as all of the attorneys, all of the parties, and all of the Courts fail to consider, mention, or state is: What did the plaintiff know about the pension in 1983 to bring an action. All of the correspondence with all the defendants herein clearly show that plaintiff did not know that her 34 years of service had been reduced to 29 years to deprive her of over $10,000 per year on her pension benefits. Plaintiff discovered in July of 1985 that her pension was a 29-year pension. Not one of the defendants has even mentioned this; the concealment continues as the briefs of all the defendants clearly show. The concealment continues as the refusal to give plaintiff a copy of her record persists.

CONCLUSIONS

The defendants ignore the causes of action. The Courts do not mention them; the Courts dismiss issues of fact without a trial; and the Courts dismiss causes of action without specifying them and the reasons for their dismissal.

The Article 78 proceeding is not appropriate for the claims of discrimination, fraud, conspiracy, concealment, deprivation of Constitutional rights, and breach. Plaintiff argues this in her brief with supporting citations.

In her brief and this reply brief, plaintiff cannot completely argue all of the causes herein due to the large number of claims and due to plaintiff's pro se status. Thus, plaintiff does not set forth the items in her papers as complete presentations but instead as substantial illustrations of the causes herein.

WHEREFORE, for all of the reasons set forth in all of plaintiff's papers in this action, this Court should reverse the three Orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint and order a trial by jury of the facts in dispute herein as Constitutionally protected. Plaintiff has been deprived of Constitutional due process to date.

Dated, December 24, 1986

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant

BRIEF FOR CITY DEFENDANTS-RESPONDENTS
(PP. 818-840)

To be argued by:
Michael S. Adler
(5 minutes)

NEW YORK SUPREME COURT
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR RESPONDENTS CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD, AND TEACHERS' RETIREMENT SYSTEM

DORON GOPSTEIN,
Acting Corporation Counsel,
Attorney for Municipal
Respondents,
100 Church Street
New York, New York 10007.
(212) 566-4331 or 4327

FRANCIS F. CAPUTO,
MICHAEL S. ADLER,
of Counsel.

January 26, 1987.

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NEW YORK SUPREME COURT
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR RESPONDENTS CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD, AND TEACHERS' RETIREMENT SYSTEM

PRELIMINARY STATEMENT

This is an action by plaintiff pro se,[1] a retired college professor challenging the computation of her pension, against the bodies responsible for computing the pension, those that formerly

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[1] Although plaintiff is not an attorney, she has had some legal education. Prompted by her pension complaints, plaintiff entered Brooklyn Law School in September, 1984, and attended for three semesters. Brief for Appellant at 15, Clissuras v. City of New York, No. 85-9002 (2d Cir., 1986).

employed her, a state regulatory agency to which she complained, her labor union, and an attorney whom the union retained on her behalf to contest the pension. Among the allegations raised are miscalculations, discrimination based upon her Greek Orthodox faith and her sex, fraud, conspiracy, and failure to give proper advice. In this consolidated appeal, plaintiff appeals to this Court from (1) a judgment of the Supreme Court, Kings County (Shaw, J.), entered on March 16, 1986,[2] dismissing her complaint as against defendants City of New York, Teachers' Retirement Board, Teachers' Retirement System, and Department of Insurance as time-barred (9-11);[3] (2) a memorandum decision[4] of the Supreme Court, Kings County (Beinstein, J.), dated December 24, 1985, dismissing her complaint as against defendant Lewis Rosenberg for failure to state a cause of action (19-21); and (3) an order of the Supreme Court, Kings County (Hurowitz, J.), dated February 14, 1986,[5] dismissing her complaint as against defendants Board of Higher Education, City University,

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[2] Although the copy of the judgment in the record on appeal contains no legible indication of entry, the municipal defendants' records show that the judgment was entered on this date.

[3] Numerical references in parentheses are to pages of the record on appeal, unless otherwise noted or apparent.

[4] It is not apparent from the record on appeal prepared by plaintiff whether there was an accompanying order or whether any such order was entered.

[5] It is not apparent from the record on appeal whether this order was entered.

New York City Technical College, and Professional Staff Congress as time-barred (29-30).

QUESTIONS PRESENTED

1. Were plaintiff's allegations concerning miscalculation of her pension properly dismissed as time-barred, where plaintiff's suit was commenced more than four months after the calculations became final and binding upon her?

2. Were plaintiff's allegations that the municipal defendants failed to honor her pre-retirement requests for counselling concerning how to maximize her pension benefits properly dismissed, where they fail to state a cause of action and are time-barred, since the municipal defendants had no duty to provide such counselling and since, in any event, the alleged breaches of duty took place more than four months before suit was brought?

3. Were plaintiff's allegations of conspiracy and fraud properly dismissed, where New York State recognizes no cause of action for civil conspiracy and where, in any event, plaintiff's conclusory complaint fails to plead elements essential to such causes of action?

4. Was plaintiff's procedural due process claim properly dismissed, where the claim is patently unmeritorious on its face, is barred by collateral estoppel, and is time-barred?

5. Was plaintiff's State Human Rights Law claim of discrimination based upon her sex and her Greek Orthodox religion

properly dismissed, where the claim is conclusory, is barred by the pendency of an administrative discrimination charge with the State Division of Human Rights, and, at least in part, is time-barred?

FACTS

(1)

Plaintiff was born on August 23, 1926 (219). She served for many years as a professor at a college affiliated with what is now the City University of New York (72). Effective September 1, 1982, plaintiff retired from this employment (72).

On January 2, 1983, plaintiff received her first monthly pension check (72). It was computed on the basis of the December 1, 1982 determination of defendant Teachers' Retirement System that plaintiff was entitled to annual benefits of $31,185.03 -- a determination that defendant Teachers' Retirement Board approved in a "final disposition" dated January 20, 1983 (213).

Plaintiff complained to the Teachers' Retirement System that the computation was erroneous and that a greater allowance was due her. By letter dated February 7, 1983, the System's Chief Actuary responded with a detailed explanation as to the method of calculation (214-15). In brief, the actuary explained that the pension was calculated on the bass of 34 years of service by adding one sum for the first 20 years of service, a second sum for an additional 2.5 years of outside service, a third sum for an additional 11.5 years of

service, and a fourth sum representing an "Increased-Take-Home-Pay" accumulation and by subtracting a sum representing a deficit resulting from a loan (214-15).

Plaintiff also complained to her labor union, the Professional Staff Congress, about the amount of the pension. By letter dated February 2, 1965, the union advised plaintiff that it had engaged a law firm to investigate the matter and to bring a legal action, if necessary (467). By letter dated February 4, 1983, the law firm advised plaintiff to contact it immediately, since litigation may be subject to a short statute of limitations (468). Following discussions, the law firm selected an actuary to investigate the matter (469). Plaintiff, however, was uncooperative, advising her attorney that she had confidence neither in him nor in the selected actuary (469). Accordingly, by letter dated April 5, 1983, the law firm advised plaintiff that it could not continue to represent her (469).

Thereafter, plaintiff complained further to the Teachers' Retirement System and to the Teachers' Retirement Board. On October 19, 1983, she submitted to the Board a lengthy memorandum (220-64). Further, the Board permitted her to voice her complaints orally before it at one of its meetings held on or about the same date (187). The Board advised plaintiff that the Executive Director of the Teachers' Retirement System would respond (187). On December 14, 1983, the Executive Director sent plaintiff a detailed 15-page memorandum which analyzed her complaints and which once again explained that the computation was accurate (390).

On January 19, 1984, plaintiff wrote the Executive Director that she was unsatisfied with his explanation (408-12). She requested a meeting, explaining: "I do not think it is possible to discuss these matters in an exchange of letters" (412). In compliance with her request, the Executive Director scheduled such a meeting (413). Plaintiff, however, asked that this meeting be cancelled (413). Thereafter, at plaintiff's request, the Executive Director scheduled a new meeting for March 28, 1984 (413).

Present at the March 28, 1984 meeting besides plaintiff were the Executive Director and the Assistant Director of the Retirement System as well as the Retirement System's Chief Actuary (413). The meeting lasted for two and one-half hours, and all of plaintiff's complaints were discussed, with explanations again provided (413-15). At the conclusion of the meeting, plaintiff requested written explanations (413). Again, the System complied, in a letter from the Executive Director dated May 30, 1984 (413-15).

The Retirement System and the Retirement Board were not, however, the only recipients of plaintiff's complaints. During 1984, she wrote several letters as well to her Congressman and to the State Insurance Department (342-75, 389-91). In a letter to her Congressman dated August 29, 1984, the State Insurance Department advised: "After a detailed review it is the opinion of the Department that the benefits have been correctly calculated, and that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised, many of them of a highly technical nature"

(391). Still, plaintiff persisted with further letters of complaint to, among others, the Retirement System and the Insurance Department (247, 379-81, 386-88, 394-96, 405, 406). Both entities responded that the calculations were correct and that plaintiff had already been furnished with detailed explanations (274, 397, 405).

(2)

On June 20, 1985, plaintiff filed a discrimination charge with the United States Equal Opportunity Commission (198-200). She alleged discrimination on the basis of her sex and her Greek Orthodox Christian religion with regard to her pension in that she was deprived of certain increments, of proper credit for her service years, and of proper counselling and in that she was harmed by computational errors (198-200). On August 9, 1985, she was issued a right-to-sue letter, the EEOC having decided not to initiate legal action on her behalf.

In July, 1985, the same charge was filed with the New York State Division of Human Rights. Br. App. at 19. It remains pending. Br. App. at 19.

(3)

Thereafter, plaintiff commenced two virtually identical lawsuits -- one in state court and one in federal court - - against the City, the Teachers' Retirement Board, the Teachers' Retirement System, the Board of Higher Education, the City University, New York City Technical College, the Professional Staff Congress, the

Department of Insurance, and attorney Lewis Rosenberg. The federal action was commenced on August 26, 1985 and the state action was commenced on August 27, 1985 (152).

Plaintiff raised four causes of action. The first cause of action alleged that, unlike male and non-Christian professors, plaintiff did not receive a pension premium for 30 years of service and did not receive counselling before retirement concerning how to maximize her benefits (72-77). The second cause of action alleged that, unlike male and non-Christian professors, plaintiff was denied proper pension credit for the years 1951-1953 and that, when she transferred between retirement systems in 1981, she was forced to make a pension contribution of $2,501.54 to cover those years (77-83). The third cause of action alleged gross negligence and computational errors regarding plaintiff's financial records, resulting in pension checks of a lesser sum than that to which she is entitled (83-87). The fourth cause of action alleged that the responses to plaintiff's inquiries and complaints were insufficient (87-101).

(4)

On November 14, 1985, the United States District Court for the Eastern District of New York (Weinstein, J.) dismissed plaintiff's federal court action. Judge Weinstein ruled that the complaint alleged no legitimate constitutional violations; that plaintiff's Title VII claims were untimely; and that plaintiff's pendent state-law claims would not be entertained, since plaintiff had not exhausted her Article 78 and

other state-law remedies. By order entered on March 31, 1986, the United States Court of Appeals for the Second Circuit affirmed. By order dated June 4, 1986, the same Court denied plaintiff's motion for rehearing en banc. Plaintiff thereafter petitioned the United States Supreme Court for a writ of certiorari. The Supreme Court denied the petition on November 4, 1986 (55 USLW 3315 (1986)), and, on January 12, 1987, also denied plaintiff's petition for rehearing (55 USLW 3474 (1987)).

(5)

With regard to the instant state court action, the municipal defendants, by motion returnable on November 13, 1986, moved to dismiss the action as time-barred in light of the 4-month statute of limitations for Article 78 proceedings set forth in CPLR §217 and in light of the 3-year statute of limitations for discrimination claims set forth in Executive Law §296; as barred by plaintiff's failure to file a notice of claim; and as failing to state any cause of action (148-53; 291-93).

By motion returnable on the same date, defendant Department of Insurance likewise sought dismissal, on the grounds of lack of subject-matter jurisdiction, failure to state a cause of action, and lapse of the statute of limitations (301-07).

In a memorandum decision dated November 19, 1985, the Supreme Court, Kings County (Shaw, J.), granted these motions, ruling that all causes of action against these defendants are time-barred (12).

Thereafter, by motion returnable on December 5, 1985, defendant Lewis Rosenberg moved to dismiss the complaint against him for failure to state a cause of action (439-44). In a memorandum decision dated December 24, 1985, the Supreme Court, Kings County (Bernstein, J.), granted the motion (19-21). The Court held that since plaintiff was able to assert all of her claims in the instant action and since plaintiff's pension grievance predated her first meeting with Rosenberg, she suffered no harm as a result of any malpractice on Rosenberg's part (19-21).

Finally, by separate motions returnable on December 20, 1985, defendant Professional Staff Congress -- on the one hand -- and defendants Board of Higher Education, City University, and New York City Technical College -- on the other hand -- moved to dismiss the complaint as against them on the grounds of failure to state a cause of action and lapse of the statute of limitations (491-98; 571-77). By order dated February 14, 1986, the Supreme Court, Kings County (Hurowitz, J.), granted the motions and dismissed the actions as against these defendants as time-barred (29-30; 64).

ARGUMENT

THE COURT BELOW PROPERLY DISMISSED PLAINTIFF'S COMPLAINT AS AGAINST THE MUNICIPAL DEFENDANTS, INASMUCH AS PLAINTIFF'S VARIOUS ALLEGATIONS EITHER FAIL TO STATE A CAUSE OF ACTION, ARE BARRED BY THE STATUTE OF LIMITATIONS, OR ARE OTHERWISE NON-COGNIZABLE.

With regard to plaintiff's allegations that the pension amount to which she is entitled was improperly computed, it is clear beyond peradventure that all such claims are time-barred. It is well-established that where allegations are of the type that can be pursued in an Article 78 proceeding, the four-month statute of limitations applicable to Article 78 proceedings applies to those allegations, without regard to the procedural vehicle used to assert them. Solnick v. Whalen, 49 NY2d 224, 229-30 (1980). Plaintiff's allegations concerning improper computation could undoubtedly have been raised in an Article 78 proceeding. Martoni v. New York State Teacher's Retirement Sys., 105 AD2d 511 (3d Dept., 1984) (Article 78 proceeding used to allege that pension benefits were erroneously calculated in violation of applicable law); see Nassau County Health Facilities Ass'n v. Axelrod, 110 AD2d 638 (2d Dept., 1985) (Article 78 proceeding used to contest computation of Medicaid reimbursement rate); Twenty-First Point Co. v. Town of Guilderland, 101 AD2d 407 (3d Dept., 1984), aff'd, 64 NY2d 954 (1985) (Article 78 proceeding used to challenge computation of taxes due). Accordingly, these

allegations are governed by CPLR 217, which applies to Article 78 proceedings, and plaintiff was therefore obliged to assert them within four months after the determination that she contests became final and binding upon her. CPLR 217. The date on which the challenged pension calculation became final and binding upon plaintiff is probably December 1, 1982 (the date that defendant Teachers' Retirement System rendered its determination as to the pension amount) and certainly is no later than either January 2, 1983 (the date that plaintiff received her first pension check) or January 20, 1985 (the date that defendant Teachers' Retirement Board approved the computation).[6] In either case, the four-month statute lapsed long before plaintiff's August 27, 1985 commencement (152) of this action. Moreover, the statute was extended neither by plaintiff's repeated requests for reconsideration (Fiore v. Board of Educ. Retirement Sys., 48 AD2d 850 (2d Dept., 1975), aff'd, 39 NY2d 1016 (1976) nor by the fact that the challenged determination covered benefits to be paid over a succeeding period of several years (see Twenty-First Point Co. v. Town of Guilderland, supra) (limitation period lapsed irretrievably four months after tax benefit determination made in 1980, notwithstanding fact that determination governed tax benefits to be reaped in each year of a succeeding ten-year period).

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[6] To the extent that plaintiff's assertion of error is based upon crediting determinations made annually based upon her salary, accrual was even earlier.

Plaintiff's allegation that she was improperly required, as a condition of transferring between pension programs in 1981, to make a pension contribution of some $2,500, is likewise time-barred. The limitation period as to that allegation lapsed no later than four months after plaintiff made the allegedly mandated contribution.

As to plaintiff's claim that the municipal defendants failed to fulfill their alleged obligation to grant plaintiff's pre-retirement requests for counselling concerning how to maximize her pension benefits, that allegation both fails to state a cause of action and is time-barred. The allegation states no cause of action, inasmuch as the municipal defendants had no duty to provide plaintiff with such counselling. Thus, for example, in Casatelli v. Ward, Index No. 11449/85 (Sup. Ct. , N.Y. Co., 9/18/85), aff'd, _____ AD2d ____ N.Y.L.J., 11/20/86, p.7, col.3 (1st Dept., 1986), a police officer alleged that his failure to comply with certain technical pension plan transfer restrictions, resulting in a diminution of benefits, was attributable to failure of the Police Department and the applicable pension fund to apprise him of these restrictions. Rejecting the allegation, Justice Wallach held: "Petitioner argues that it was respondents' duty correctly to advise him as to how to maximize his pension benefits...., and that in the absence of such advice..., respondents should now be estopped from asserting the law. Such a contention would be without merit even against a claim...that erroneous advice was given." Likewise, in Owens v. McGuire, 121 AD2d 292 (1st Dept., 1986), the Court held that a pension plan

member had no claim against a pension fund based upon an assertion that the member was not properly advised as to certain provisions that would, if he had employed in the past, have increased his benefits. See also Burns v. Regan, 87 AD2d 944 (3d Dept.), app. dsm'd, 57 NY2d 954 (1982).

In any event, the failure-to-counsel allegation is time-barred. Assuming, arguendo, that the municipal defendants had a duty to honor the demands for counselling that plaintiff allegedly made before her 1982 retirement, any causes of action relating thereto accrued at the time of such refusal(s) and became time-barred four months later -- long before the instant action was commenced. See CPLR 217.

With regard to plaintiff's allegations of conspiracy, no cause of action is stated. To begin, New York State does not recognize any cause of action for civil conspiracy. Freyne v. Xerox Corp., 98 AD2d 965 (4th Dept., 1983). In any event, even if such a cause of action were accepted in this state, plaintiff's complaint does not properly plead the elements of civil conspiracy. Nowhere in the complaint is there any reference to any meeting of the minds, preconceived common plan, or joint activity on the part of defendants, as is required in order to properly plead conspiracy. See Powell v. Jarvis, 460 F2d 551, 553 (2d Cir., 1972). On the contrary, plaintiff's position appears to be that the mere fact that an individual or entity fails to acknowledge the legitimacy of her complaints or acts to her disadvantage automatically renders that

individual or entity part of a conspiracy against her. Indeed, this is evident from the explanation of her conspiracy allegation that plaintiff made in connection with her federal court litigation. Thus, for example, in her brief to the United States Court of Appeals for the Second Circuit, she argued that the fact that none of the thirty-odd attorneys whom she consulted would accept her case indicates that they too were part of this conspiracy. Brief for Appellant at 15, Clissuras v. City of New York, No. 85-9002 (2d Cir. 1986). Similarly, in oral argument before Judge Jack Weinstein, she described the conspiracy as including, among others, the Social Security Administration and the Internal Revenue Service, which audited her tax returns several times. Appellant's Appendix at 362, Clissuras v. City of New York, No 85-9002 (2d Cir., 1986). Clearly, no conspiracy is sufficiently alleged. See San Filippo v. United States Trust Co., 737 F2d 246, 256 (2d Cir., 1984); Contemporary Mission, Inc. v. United States Postal Svc., 648 F2d 97, 107 (2d Cir., 1981).

Plaintiff's fraud allegations likewise state no cause of action against the municipal defendants. To begin with, plaintiff's allegations are conclusory, and fail to meet the statutory requirement that a fraud cause of action be pleaded "in detail." CPLR 3016(b); see Pope v. New York Property Ins. Underwriting Ass'n, 112 AD2d 984 (2d Dept.), aff'd, 66 NY2d 857 (1985). Moreover, plaintiff fails to establish all of the elements of fraud, such as, for example, scienter. See Weir Metropolitan Ambu-Service, Inc. v. Turner, 57

NY2d 911 (1982); Lyons v. Quandt, 91 AD2d 709 (3d Dept., 1982). Finally, plaintiff's allegations -- which consist essentially of the claim that the municipal defendants granted plaintiff pension benefits below those to which she is contractually and statutorily entitled -- state no cause of action that is independent of the one for miscalculation that plaintiff could properly have been pursued in an Article 78 proceeding in the nature of certiorari. Cf. Spellman v. Columbia Manicure Mfg. Co., 111 AD2d 320 (2d Dept., 1985) (no separate fraud cause of action stated where only "fraud" is that of breach of contract); Freyne v. Xerox Corp., 98 AD2d 965 (4th Dept., 1983) (same).

With regard to plaintiff's claim that the municipal defendants deprived plaintiff of procedural due process, that claim too was properly dismissed. Firstly, the claim is facially deficient, inasmuch as plaintiff was clearly accorded adequate procedural due process. Far from ignoring plaintiff's repeated complaints, the municipal defendants considered them at length, even going so far as to send her a 15-page memorandum explaining their invalidity and to hold a two-and-a-half-hour personal meeting with her, with the Chief Actuary in attendance. Furthermore, contrary to plaintiff's intimation, she had no right to a full evidentiary hearing. See Plaza Realty Investors v. New York City Conciliation and Appeals Bd., 110 AD2d 704 (2d Dept., 1985); cf. Basciano v. Herkommer, 605 F2d 605 (2d Cir.), cert. denied, 442 US 929 (1979). For, the risk of error in standard pension calculations is small, the probable value to a

pensioner of a full adversarial hearing regarding calculations is slim, and the burden upon the City of granting such a hearing to all who complain about computational errors would be enormous. See Matthews v. Eldridge, 424 US 319 (1976). Secondly, the claim is barred by collateral estoppel, since, in plaintiff's federal court action, Judge Jack Weinstein dismissed the identically-worded claim for failure to state a cause of action. See 175 East 74th Corp. v. Hartford Accident and Indem. Co., 51 NY2d 585, 590n.1 (1980). Thirdly, the claim is time-barred, since it could have been raised in an Article 78 proceeding and is hence subject to a four-month statute of limitations dating from the challenged determination. See Solnick v. Whalen, supra, 49 NY2d at 227 (four-month Article 78 statute of limitation applies to attack on administrative determination as invalid for lack of procedural due process).

As for plaintiff's allegation that the municipal defendants discriminated against her based upon her Greek Orthodox religion and based upon her sex in violation of section 296 of the Executive Law, that too was properly dismissed, for multiple reasons. To begin with, the allegation is entirely conclusory and hence states no cause of action. Thus, although plaintiff avers in her complaint that male and non-Greek Orthodox professors received certain benefits denied her, neither in her complaint nor elsewhere in her voluminous submissions does she make a genuine showing of sex-based or religion-based animus. Nowhere does she claim that any of defendants or their employees ever indicated any dislike for women or

for Greek Orthodox people. Nor does she claim that women as a class or Greek Orthodox practitioners as a class were subjected to the same supposed disadvantages as was she. On the contrary, she simply claims that a few acquaintances were treated more favorably. Nowhere does plaintiff explain the basis, if any, for her conclusion that this difference in treatment was not the result of differing individual circumstances or of mere inadvertence but rather was the result of sexual and religious bias. Even allowing for liberal pleading principles and for the limited indulgence due a pro se college professor with three semesters of law school education, the sufficiency of her discrimination claims is doubtful. See Morpurgo v. Board of Higher Educ., 423 F Supp 704, 711 (S.D.N.Y., 1976).

In any event, plaintiff's discrimination cause of action may not be maintained because of section 297(9) of the Executive Law. Pursuant to that section, no private cause of action may be maintained to redress discrimination in violation of section 296 of the Executive Law where an administrative discrimination charge was filed with the State Division of Human Rights, unless that agency has formally dismissed the charge for "administrative convenience." Exec. L. §297(9). Plaintiff concedes in her brief to this Court that an administrative discrimination charge was filed with the State Division of Human Rights in July of 1985. Br. App. at 19. Further, though plaintiff laments that the State Division has been lax in that "it has shown no signs of contacting all of the respondents and no signs of any investigation," she admits that the State Division charge is still

pending. Br. App. at 19. Accordingly, plaintiff is absolutely barred from asserting her discrimination claims in this action. See Koster v. Chase Manhattan Bank, 609 F Supp 1191, 1196 (S.D.N.Y., 1985) (filing of state administrative discrimination charge which has not been dismissed for administrative convenience bars cause of action predicated upon section 296, even if administrative agency has been "slothful"); Low v. Gibbs & Hill, 92 AD2d 467 (1st Dept., 1983).

Finally, at least with respect to the claim that the municipal defendants improperly compelled plaintiff to make a pension contribution when she transferred between pension plans in 1981 and also with respect to other of plaintiff's claims that accrued more than three years before plaintiff's August 27, 1985 commencement of this action (152), plaintiff's discrimination cause of action is time-barred under the 3-year statute of limitations that applies to causes of action based upon section 296. See Koerner v. State of New York, 62 NY2d 442 (1984).[7]

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[7] Contrary to plaintiff's assertion, the mere fact that an allegedly discriminatory determination made and concluded at a discrete point in time in the past may have lasting adverse consequences for a party (e.g., municipal defendants' allegedly discriminatory refusal to properly credit plaintiff's account when she transferred between pension plans in 1981) does not render that determination a continuing wrong. Indeed, as the Appellate Division-First Department has stated in rejecting the assertion that alleged discrimination in past salary increases and promotions constituted a continuing wrong because of continuing adverse impact:

> Plaintiff's assertion that Chemical's acts are continuing wrongs and as a result,

(Footnote Continued)

In sum, as demonstrated above, it is quite clear that, with respect to the municipal defendants, all elements of plaintiff's complaint were properly dismissed.[8] Accordingly, there should be an affirmance.

(Footnote Continued)

> the statute of limitations is tolled, is without merit. Her discrimination claims are not continuing wrongs, albeit that the impact of such alleged wrongs may continue. Simply because an act of discrimination may have a lasting effect, it cannot be seriously argued that the tort is a continuing wrong unaffected by any statute of limitations.

Patrowich v. Chemical Bank, 98 AD2d 318 (1st Dept., 1984), aff'd, 65 NY2d 541 (1984). The law, rather, is that a discrimination cause of action accrues when the discrimination is "first perpetrated and felt." Board of Educ. v. New York State Div. of Human Rights, 56 NY2d 257, 262 (1980). Indeed, any other notion would be inconsistent, for example, with the Court of Appeals' holding that a claim for discriminatory non-reappointment of a teacher accrues when the teacher is first advised that he will not be reappointed. Queensborough Comm. Coll. v. Board of Educ., 41 NY2d 926 (1977).

This is not to say, however, that a new cause of action does not accrue when a new discriminatory act in essence incorporates an old discriminatory act. Thus, for example, it has been held that the promulgation of a seniority system denying seniority credit for time when women employees were on compulsory pregnancy leaves constitutes an act of discrimination distinct from that involved in compelling the pregnancy leaves. Board of Educ. v. New York State Div. of Human Rts., supra; State Div. of Human Rts. v. Board of Educ., 112 AD2d 435 (2d Dept., 1985). Such a situation is to be distinguished, however, from that of a past discriminatory act that, though incorporated into no later separate discriminatory acts, nevertheless has continuing adverse impact.

[8] It is immaterial that, in part, we urge affirmance on grounds other than those relied upon by the lower court and other than those that we raised below, inasmuch as the grounds that we advocate are ones that could not have been contested if raised below. See Sega v. State of New York, 60 NY2d 183, 190 n. 2 (1983).

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD BE AFFIRMED, WITH COSTS, INSOFAR AS IT PERTAINS TO THE MUNICIPAL RESPONDENTS.

January 26, 1987.

Respectfully submitted,

DORON GOPSTEIN,
Acting Corporation Counsel,
Attorney for Municipal
Respondents.

FRANCIS F. CAPUTO,
MICHAEL S. ADLER,
of Counsel.

PLAINTIFF-APPELLANT'S REPLY BRIEF TO
CITY DEFENDANTS-RESPONDENTS
(PP. 841-861)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

PLAINTIFF-APPELLANT'S REPLY BRIEF RESPONDING TO BRIEF FOR CITY DEFENDANTS-RESPONDENTS

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 1750
Brooklyn, NY 11201
(718) 875-6171

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

PLAINTIFF-APPELLANT REPLY BRIEF RESPONDING TO BRIEF FOR CITY DEFENDANTS-RESPONDENTS

PRELIMINARY STATEMENT

Plaintiff-appellant submits this reply brief to respond to the brief of the City defendants-respondents (City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York).

Plaintiff is appealing three orders of the Supreme Court of the State of New York, County of Kings, by which order the Court dismissed the complaint as against all of the defendants herein. The orders were consolidated for purposes of this appeal and the appeal has been calendared for the January, 1987 term. On December 24, 1986, plaintiff-appellant served and

filed reply brief responding to the briefs of all defendants-respondents, with the exception of the City defendants-respondents. Since the brief of the City defendants-respondents was served on plaintiff on January 26, 1987, plaintiff, in this paper, is responding to said City defendants-respondents. However, in the interests of justice and understanding, this reply brief should be joined to the December 24, 1986, reply brief.

The brief of the City defendants-respondents was submitted by Doron Gopstein, Acting Corporation Counsel of the City of New York, attorney for City defendants-respondents; by Francis J. Caputo and Michael S. Adler, Assistant Corporation Counsels, of Counsel.

Plaintiff-appellant is representing herself in this action due to the refusal of over 30 attorneys to represent her. Plaintiff is not an attorney; due to the exigencies of this action, plaintiff enrolled in law school.

RESPONSES TO BRIEF

A. RESPONSES JOINING ALL BRIEFS

Plaintiff respectfully refers the Court to pp. 2-6 of the December 24, 1986, Reply Brief, in which plaintiff sets forth the failure of the defendants to respond to the causes of action herein; namely, discrimination, fraud, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach of contractual and fiduciary obligations.

Attorneys Caputo and Adler, attorneys for City defendants-respondents, do not mention, do not set forth a response to, and do not controvert in any manner plaintiff-appellant's focal claim that her pension was calculated discriminatorily and fraudulently according to the New York State Career Pension Plan at the rate of 2½% for 29 years in the plac and stead of 2½% for 34 years with a 30-year entitlement.

Attorneys Caputo and Adler do not mention, do not set forth a response to, and do not controvert in any manner plaint appellant's claim that her service was credited discriminatoril and fraudulently whereby five years of plaintiff's City service was charged as "outside service" in violation of New York State Pension Laws and whereby the five years were not thereafter included in the pension calculation.

The attorneys do not show in any manner, by argument or by proof, that plaintiff knew prior to July, 1985, that her pension was fraudulently and discriminatorily a 29-year pension instead of a 34-year pension for the years she served. Plainti documents this discovery (Rec. on Ap., p. 570) and she document the five fraudulent versions of her pension which she received from defendants prior to July, 1985, in their attempts to deceive plaintiff and conceal the use of 29 years for the pensi amount (Rec. on Ap., pp. 213-215, 501, 608).

The attorneys do not mention what the amount of the pension should be; the attorneys do not mention how service should be credited according to law. They continue the conceal ment of the causes of action. They continue the concealment

of fraud. The attorneys use the same tactics as the defendants. They make statements without any specificity. They have not submitted any documentation or proof to controvert plaintiff's claims. All of the attorneys herein have submitted briefs in which no one states the pension amount and the law for crediting service. The pension was arrived at fraudulently and the service was credited fraudulently. At the very least, these are issues of fact which the Court below improperly dismissed without stating what was being dismissed and without requiring a trial for said issues of fact as Constitutionally required.

The attorneys do not mention plaintiff's third area of causes of action; namely, the improper maintenance of plaintiff's accounts. In addition to the fraud therein, the manner in which they were maintained constitutes gross negligence in the case of the fiduciary defendants.

The attorneys do not mention plaintiff's fourth area of causes of action; namely, deprivation of rights. They make no mention of defendants' failure to provide correct answers to pension questions, failure to provide equal protection of the laws, failure to disseminate information widely to the large group of similarly situated persons, failure to account for plaintiff's pension moneys, failure to include plaintiff's employment and pension service in computer, failure to provide copy of plaintiff's records, failure to allow plaintiff to see her records, failure to explain the use of two pension numbers and two retirement dates for plaintiff, failure to allow a due process hearing, and failure to respond to all the claims herein.

The attorneys do not respond to plaintiff's claims; they make many misstatements of facts and omit many facts, whic misstatements and omissions are set forth below in detail; and they continue the concealment of the causes of action herein. The Court below did not require the attorneys to respond, did not consider the documented fraud by which all of plaintiff's causes of action were established, and improperly dismissed issues of fact.

B. -RESPONSES TO BRIEF OF CITY DEFENDANTS-RESPONDENTS

The brief submitted by Attorneys Caputo and Adler is so full of misstatements, errors, misinterpretations, and omissions that it is difficult to respond to all of such state ments adequately due to the volume.

In the FACTS summary (Res.Br.,* p. 4, 1st ¶), the attorneys omit date on which plaintiff started her employment the College and the number of years she served. They describe her employment as, "She served for many years . . . ." Did th attorneys find a starting date of September 1, 1948, on the records of the City defendants? Plaintiff is not allowed to s the records and, therefore, does not know the extent of her se vice on said records. Over the years various Pension System employees have informed plaintiff of gaps in her service. Upo informing them that she had continuous service with no gaps,

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*Reference is to page or pages of Brief for City Defendants-Respondents.

she was assured that appropriate corrections would be made. Since the College refuses to give plaintiff a copy of her record, it is difficult to determine the extent of the misinformation from that source. However, an example of such misinformation is found on page 550 of the Record on Appeal, in which the College misstated plaintiff's appointment to Assistant Professor by five years in a letter to the Pension System. There is no evidence that there has been a correction of this. In fact, this misstatement appears to conform with the deprivation of five years of service in the pension calculation.

The attorneys continue on page 4 of their brief to a summary ofthe action of the Retirement Board. The Board approved the pension amount at its January 20, 1983, monthly meeting (Rec. on App., p. 213). Plaintiff questions this approval since the Report of Actuary indicates that payment should begin after such approval. Plaintiff should have received a January 31, 1983, check as the first check. Instead she received a December 31, 1982, check as the first check.

Further on page 4, the attorneys state in effect that since plaintiff complained to the Pension System that a greater allowance was due her, the System's Chief Actuary responded with a detailed explanation. This is not true. Plaintiff received her first check with no accounting, no statement, and no explanation of the amount which was an amount which included retroactivity to September 1, 1982. Plaintiff waited for information to no avail. After about two weeks, plaintiff went to the Pension System for information, not to complain about a greater allowance

due her. At that point, she was handed the Report of Actuary and since the Report was undecipherable to plaintiff as to the pension, she sought information which would clarify the figure Also, there were errors and omissions therein; i.e., incorrect pension member number and provision for "outside service." In response to plaintiff's questions, she was referred to at leas three people who not only indicated they could not answer but all made it clear they would not answer. Due to this unwillin ness, plaintiff was referred to the Executive Director of the Pension System who then referred her to the Pension System's Chief Actuary, since, as he stated, the figures were those of the Actuary. The Chief Actuary informed plaintiff that he wou send her an explanation of the pension amount.

Plaintiff was seeking information as to the first ch She did not have knowledge of the computation to challenge it that point; she did not know of the use of 29 years for her 34 years of service; and she did not know that the five years of "outside service" were not included in the calculation. All o this was and is continuing to be concealed by each and every defendant and each and every attorney herein. It took over tw years to overcome the obstructions of the defendants in plaint search for pension information and answers. (Rec. on Ap., pp. 73, 206-207, 279-280.)

The attorneys continue on their page 4 to a summary Chief Actuary's explanation of the method of calculation. The summary refers to 2.5 years of outside service and a deficit resulting from a loan. Are the attorneys agreeing with the

use of outside service for plaintiff as evidenced by their reliance on the Actuary's letter? Are the attorneys not aware of the New York State Pension Law for crediting prior service, as that Law is imprinted on the forms of the Retirement System, as follows:

"PRIOR SERVICE:

"You are entitled to immediate credit for prior service as follows:

"* * *.

"(b) If it was rendered during which employment you became a member of this System.

"(c) Service credit that was transferred from any public retirement system in New York City or New York State."

In August of 1981, the Pension System evaluated plaintiff's service as, in effect, 34 years of New York City Service (Rec. on Ap., p. 216). The defendants do not respond to the Law cited above and the Service Certification.

Are the attorneys agreeing with the deficit which was set forth in the Chief Actuary's letter as to plaintiff's Annuity Savings Fund? In the Report of Actuary, the Chief Actuary sets forth a pension payment for the amount in plaintiff's Annuity Reserve Fund which clearly did not have a deficit. The defendants do not mention the Report of Actuary.

Are the attorneys agreeing with the Chief Actuary's use of pension for ITHP after 20 years of Career Pension Plan service? In the Report of Actuary, the Chief Actuary provides for ITHP pension based on the entire amount in plaintiff's ITHP accumulation. The defendants do not mention the Report of Actuary.

Are the attorneys agreeing that the Chief Actuary's explanation of the pension calculation is the formula according to the Career Pension Plan? It appears that the Chief Actuary used the formula in §B20-41.2 of the Administrative Code of the City of New York, the use of which is a sham and fraudulent.

Are the attorneys agreeing with the Chief Actuary that there is no provision for a 30-year plus retirement allowance according to the provisions of the Career Pension Plan?

The attorneys do not mention the third version of the pension which was provided by the Executive Director of the Pension System (Rec. on Ap., p. 215) which includes such errors as an amount for minimum accumulation based on the amount required for members with less than 20 years of service, notwithstanding the fact that there is no reduction of pension for the minimum calculation in the Career Pension Plan.

Did the attorneys include a summary of the Chief Actuary's letter as documentation of the accuracy of the pension calculation? Is their source of the pension calculation the February 7, 1983, letter of the Chief Actuary? The Chief Actuary did not respond to plaintiff's questions regarding the explanations in his letter. The Executive Director stated this in his May 30, 1984, letter to plaintiff (Rec. on Ap., p. 272, 1st ¶). How would the attorneys herein respond to plaintiff's above questions, to which no one has responded to date?

The attorneys herein follow the tactics of the defendants: they make statements without supporting the statements in any way. The defendants have not submitted one piece of

documentation to support their position for dismissal of plaintiff's claims.

There are so many misstatements in the City defendants-respondents' brief that replying to each would require great lengths. To avoid extending this reply unduly plaintiff will attempt to set forth the misstatements without due clarification as a means of bringing them to the attention of this Court.

The attorneys improperly summarize the events as to attorney retained by the Union and plaintiff (Res.Br., p. 5, 1st ¶) For a firsthand summary see Rec. on Ap., pp. 458-460, 473-474. What were the "discussions" to which the attorneys refer on their page 5? How was plaintiff unco-operative? The attorneys have no firsthand knowledge of what transpired.

The attorneys incorrectly summarize the events which involved the Teachers' Retirement Board (Res.Br., p. 5, 2d ¶). For a firsthand summary see Rec. on Ap., pp. 280, 266-270. The attorneys refer to page 187 of the Record as support for the statement that the Board advised plaintiff that the Executive Director of the Pension System would respond to plaintiff's memorandum to the Board. On page 187, plaintiff clearly states that the Board advised plaintiff that it would respond. The December 14, 1983, letter of the Director was not a response for the Board; it was a response to a letter to the Director (Rec. on Ap., p. 266). By way of important note, the correspondence on pages 220--273 of the Record clearly shows that plaintiff had no knowledge of the fraudulent deprivation of five years in her pension and of the correct pension plan, among other items, at that point in time.

The attorneys incorrectly summarize the events as to the March 28, 1984 meeting with the Directors and Actuary of the Pension System (Res.Br., p. 6). All of plaintiff's complaints were not discussed and explanations were not provided. The Executive Director cautioned the others not to provide more than a "yes" or "no" answer to plaintiff's questions. Since all the questions were not answered, plaintiff requested written explanations. It was apparent that the meeting which plaintiff requested was not to be a good faith meeting on the part of the Pension System. The May 30, 1984, letter which the attorneys state complied with the explanations indicates clearly that all questions were not answered (Rec. on Ap., p. 414) and these questions have not been answered to date. In said letter the Executive Director stated that plaintiff was shown records to prove that she was not a member of the State Pension System, in response to her question (Rec. on Ap., p. 415, No. 19). Plaintiff was not shown such records at the meeting. Plaintiff mailed proof of membership in the State System to the Pension System (Rec. on App., p. 217), which the Pension System continues to ignore, fraudulently.

In their summary of the events involving the State Insurance Department, the attorneys distort what occurred by virtue of omission of material events. Plaintiff presents a clear account of the complete correspondence with the Insurance Department on pp. 333-336 of the Record. The Insurance Department has not responded to plaintiff's claims as presented in her

April 5, 1984, letter, to date. In the quotation of the Department's August 29, 1984, letter, which the attorneys set forth in their p. 6, the Department refers to a "detailed review." There is no evidence of said review. Have the attorneys seen any evidence of it? The quotation continues and includes a statement to the effect that complete and correct answers have been furnished to all of the questions raised. It appears that with that statement, the Insurance Department joined the conspiracy to conceal the causes of action herein. There is absolutely no indication where the complete and correct answers are to be found. Then, the attorneys refer to the March 27, 1986, letter of the Pension System to show that the calculations were correct and all questions had been answered (Rec. on Ap., p. 274). How do the Pension System and the attorneys explain the use of "outside service" for plaintiff in violation of the Law quoted above on page 8 herein? How does the Pension System explain not following this Law which is imprinted on its forms? The attorneys refer to the January 31, 1985, letter of the Insurance Department again to show that the calculations were correct and all questions had been answered (Rec. on Ap., pp. 397-398). One reading of the second answer in that letter shows that the Department ignored plaintiff's proof of membership in the State System, which proof plaintiff mailed to the Department on April 30, 1984 (Rec. on Ap., pp. 373-374); that the Department concealed the State Law for prior service; and that the Department ignored the Pension System's certification of plaintiff's 34 years of service as City Service (Rec. on Ap., p. 347). The attorneys refer to the

June 7, 1985, letter of the Insurance Department again to show that the calculations were correct and all questions had been answered (Rec. on Ap., p. 405). It would be appropriate for the defendants and the attorneys to show the correctness of the calculations and the answers to all questions. These letters show that plaintiff's claims of discrimination and fraud continued to June 7, 1985; that the defendants concealed the causes of action to that date; and that the defendants conspired to conceal the causes of action to plaintiff's damage.

The defendants do not document in any manner their generalizations that everything has been calculated correctly and all questions have been answered. They ignore plaintiff's documentation and persist in the discrimination and fraud. It should be a simple matter for the defendants and attorneys to state the Laws according to which everything was calculated correctly.

On their page 7, the attorneys, in FACTS (2), briefly refer to the events involving the EEOC and the SDHR. Neither agency showed any evidence of investigation of plaintiff's claims; neither agency conducted a hearing. The State Division waived its jurisdiction over the matter and the EEOC then issued a right to sue letter.

On their page 8, the attorneys, in FACTS (3), summarize plaintiff's four areas of causes of action and in the process grossly omit substantial claims. The first cause of action which is set forth in the complaint is that plaintiff's pension was not calculated for her 34 years of service; that the defendants concealed the Pension Law providing for a 30-year entitlement for

30-plus years of service; and that the defendants would not give plaintiff any and/or correct pension information. Plaintiff was not seeking counseling before retirement concerning how to maximize benefits, as the attorneys state on their page 8. Plaintiff was seeking information. She discovered well after retirement that males and/or non-Christians were counseled and directed concerning how to maximize their benefits. As to the second cause of action, the complaint clearly sets forth that plaintiff claims that her pension is a 29-year pension in the place and stead of a 34-year pension in reckless disregard of the law on the part of defendants (Rec. on Ap., p. 82, 2d ¶). The attorneys do not state this in any form. Not only do they misstate the second cause of action, they also falsely state that plaintiff transferred between retirement systems in 1981. Plaintiff transferred in 1968. The Pension System did not evaluate her service until 1981, despite the fact that by law this is to be done within 4 years after entry into the system. The third cause of action is stated properly on page 8; namely, the Pension System's failure to maintain plaintiff's statements of accounts properly. As to the fourth cause of action, the deprivation of plaintiff's rights, the attorneys reduce it on their page 8 to insufficient responses. The attorneys totally disregard plaintiff's claims of deprivations of Constitutional rights of due process, the right to counsel, and the right of equal protection of the laws. In addition, plaintiff was deprived of the right to her records, the right to correct information from the defendants who are in a fiduciary relationship with plaintiff, the right to an accounting of her moneys, and the right

to equitable and fair treatment (Rec. on Ap., pp. 87-101). As to the claims in the complaint which constitute the fourth cause of action, reducing them to insufficient responses constitutes a gross misstatement. Is this the method by which the attorneys justify their not responding to the deprivation of rights?

In FACTS (4), on page 8 of the brief, the attorneys summarize the status of plaintiff's action in the Federal courts. The Federal action is being argued and to begin to involve it in this action is an impossible task; the attorneys omit material aspects of the Federal action which require lengthy and detailed explanations.

In FACTS (5), on page 8 of the brief, the attorneys summarize the three decisions issued in the Court below. Plaintiff presents arguments in great detail as to the three decisions on pages 22-28 of her brief, to which the plaintiff respectfully directs this Court. The Courts below totally disregarded plaintiff's claims and documentation of defendants' concealment of the causes of action, defendants' fraud, defendants' conspiracy to defraud, and defendants' deprivations of plaintiff's rights as protected by the Constitution and by laws. The Courts below improperly dismissed issues of fact without a trial. Defendant Rosenberg served his answer, which pleading joined issues of fact. All of the defendants used affidavits to support their motions for dismissal, which affidavits joined issues of fact. Plaintiff sets forth the facts in great detail in all papers, including this one, due to the volume of facts which are in dispute. Not one of the orders below states that plaintiff's action is required to be brought as an Article 78. The ruling of time bar based on

the applicable four-month limitation is not explained in any order. Judge Hurowitz would not explain it on the record (Rec. on Ap., p. 64). The Judges also would not respond to plaintiff's claims of fraud, which claims were documented.

As to the Argument of the attorneys which begins on page 11 of their brief, plaintiff respectfully refers to her Argument on pages 28-48 of her brief which plaintiff reiterates as though presented here in rebuttal to the Argument of the attorneys.

Not one Judge has stated that plaintiff is required to bring her action as an Article 78 proceeding.

Discovery is vital to plaintiff's action. That fact alone points up the inapplicability of the Article 78 to plaintiff's actions.

Plaintiff has not been allowed the right to amend her pleading should the Court have deemed the complaint insufficient.

The attorneys' Argument fails due to the fact that nowhere do the attorneys respond to the calculation of pension for 29 years instead of 34 years; nowhere do the attorneys argue or respond to the violation of the Law providing for prior service. The attorneys do not consider when plaintiff learned the facts of these fraudulent acts. All of plaintiff's papers show clearly that plaintiff was not aware that her pension was a 29-year pension until July of 1985. All of the defendants concealed this and continue so to do. All of the attorneys conceal this and continue so to do. Are the Judges and the attorneys holding and arguing that those two acts of concealed fraud are

limited by a four-month statute of limitation?

The Judges and the attorneys fail to take into account the fact that the discriminatory and fraudulent policy against plaintiff on the basis of her sex and religion continues unabated. Plaintiff knows males and/or non-Christians who received the appropriate benefits after plaintiff's case and this is continuing to date.

The attorneys argue on page 13 of their brief that a claim of failure to advise is without merit even where the advice given is erroneous. Plaintiff's claim is not one of erroneous advice. Plaintiff was seeking information and answers to questions. She was the receiver of fraudulent statements, concealments, abuses, and deprivations. The College fraudulently informed plaintiff that she could not "purchase" the first five years of her City service. This continued from 1968 to 1981 when the Pension System fraudulently informed plaintiff that she was required to purchase the first five years as "outside service". Plaintiff had no information on which to challenge these statements. Fiduciaries were informing her of the requirements. It was not until long after retirement that plaintiff discovered that males and/or non-Christians did not have to purchase their early years at the College and that they were credited for the years even in the instances when they did not contribute to a Pension System. This discrimination has not ended and there is no four-month limitation to such claims.

As to plaintiff's claim of conspiracy, the attorneys argue on their page 14 that plaintiff's position seems to be that

the failure of a party to acknowledge the legitimacy of plaintiff's claims or acts to her disadvantage renders that party as a conspirator against her. Plaintiff based the conspiracy claim on the fact that each and every defendant concealed all of the causes of action herein. The attorneys do not give a non-conspiratorial response to the concealment. Are the attorneys claiming that the fiduciary-defendants did not know the pension calculation for a 34-year pension; further did they not know the Law for crediting prior service? The only explanation is a conspiracy to defraud. How do the attorneys explain the refusal of over 30 attorneys to represent plaintiff? As to the Internal Revenue Service, plaintiff has been audited over 12 times since 1968. The attorneys refer to this as "several times," on their page 15. Plaintiff was informed by one of the many auditors that it appeared that someone was harassing her. The attorneys do not offer any alternative explanations. The essence of a claim of conspiracy is to join the defendants to the acts of each other which is a basis on which the defendants herein become responsible for plaintiff's causes of action.

As to the attorneys' arguments on due process which begin on their page 16, plaintiff explained above the fact that the 2½ hour meeting was not conducted in good faith which is a requirement of due process; plaintiff did not intimate that she had a right to a full evidentiary hearing.

As to the attorneys' arguments on discrimination on their page 17, plaintiff has set forth in many of her papers that plaintiff discovered that she was being discriminated

against on the basis of her sex and religion when she found that those who were receiving their benefits differed only as to sex and religion. Plaintiff did not claim discrimination against Greek Orthodox individuals; the discrimination is against female and Christian. The individuals whom plaintiff identified in this manner are individuals who are similarly situated as to plaintiff with the exception of sex and religion. The defendants who are responsible for disseminating information do not disseminate information widely to the large group of similarly situated individuals. Instead they disseminate the information on an individual basis which leads to invidious discrimination and the situation in which plaintiff finds herself. The attorneys do not explain why the 3-year statute of limitations for discrimination bars the discriminatory computation of plaintiff's pension claim.

CONCLUSIONS

Plaintiff respectfully refers this Court to the Conclusions found on page 16 of her reply brief which was served December 24, 1986. The conclusions set forth in the earlier reply brief are reiterated here as though fully set forth here.

Dated, February 2d, 1987.

Respectfully submitted,

ALICE CLISSURAS
Plaintiff-Appellant, pro se

PLAINTIFF-APPELLANT'S ORAL ARGUMENT ON APPEAL TO APP. DIV. (PP. 862-871)

APPELLATE DIVISION : SECOND DEPARTMENT

ORAL ARGUMENT

THURSDAY, MARCH 5, 1987

PRESIDING JUSTICE BRACKEN

JUSTICE LAWRENCE

JUSTICE KUNZEMAN

JUSTICE SPATT

My name is Alice Clissuras, I am the plaintiff-appellant pro se. I am representing myself in this action due to the refusal of over thirty attorneys to represent me.

This statement is being read by me for purposes of the record and its accuracy. It is not being read in order to bar questions and interruptions. In deference to justice in this matter, your Honors' questions and interruptions are welcomed by this plaintiff-appellant.

In a thirty-three page complaint, I set forth in special detail the facts for establishment of the claims and causes of action herein which I bring against the nine named defendants herein. The defendants have four legal representations. The Corporation Counsel of the City of New York represents the Pension System and the City Defendants. The Attorney General of the State of New York represents the Board of Higher Education and the College. The Union is represented by its counsel. And Defendant Attorney Rosenberg is represented by private counsel.

Read Cover page

Plaintiff's claims in this action are:

1) EMPLOYMENT DISCRIMINATION

2) FRAUD

3) CONCEALMENT OF CAUSES OF ACTION

4) CONSPIRACY

5) DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS-- RIGHT TO EQUAL PROTECTION OF LAWS, RIGHT TO DUE PROCESS, RIGHT TO COUNSEL, AND RIGHT TO TRIAL BY JURY

6) DEFENDANTS' BREACH OF THEIR CONTRACTUAL AND FIDUCIARY DUTIES

7) DEFENDANTS' GROSS NEGLIGENCE

8) ABUSE OF PLAINTIFF'S PERSON, RIGHTS, AND PROPERTY

9) EXTRAORDINARY MEASURES USED BY DEFENDANTS TO PREVENT PLAINTIFF FROM RETAINING LEGAL COUNSEL AND GAINING PENSION AND LEGAL INFORMATION

10) EXTRAORDINARY TACTICS USED BY DEFENDANTS TO PREVENT DISCOVERY OF THE CAUSES OF ACTION, TO CAUSE DELAY, AND TO CAUSE EXPIRATION OF TIME.

Each and every one of the ten claims is established by the facts set forth in the complaint.

Each and every one of the ten claims is documented by the plaintiff in the 656-page Record on Appeal.

Not one of the ten claims has been answered or controverted by defendants.

Defendants have not presented any documentation to controvert any one of the ten claims.

Read entire page ✓

Defendants state plaintiff's claims improperly and inaccurately throughout in their papers. It appears that this is done to avoid responding to the claims.

For example, the basic claim which plaintiff makes is that her pension was discriminatorily and fraudulently calculated for 29 years in the place and stead of the 34 years which she served. Also, plaintiff's prior service was discriminatorily and fraudulently credited as "outside service" in the place and stead of her City service. Moreover, the years were not included in the pension calculation. Not one defendant responds to these claims which were set forth in the complaint and which were documented in the Record on Appeal. By avoiding these claims the defendants avoid responding to the discrimination and fraud on which the claims were founded.

The improper crediting of plaintiff's prior service violates the Retirement and Social Security Section of the CPLR Education Law. This was done fraudulently and discriminatorily as the papers which required that this service be purchased show. With respect to the fraud, it appears that the Code of Professional Responsibility has been violated. With respect to the fraud, it appears from their failure to respond that the Attorney General and the Corporation Counsel have not fulfilled the responsibilities of their respective offices.

Plaintiff received her first pension check on or about January 2, 1983, the amount of which was discriminatory and fraudulent. At that time, due to defendants' concealment, plaintiff was not aware of the discrimination and fraud. Recovery for damages for an unlawful discriminatory practice under subdivision 9 of Section 297 of the Executive Law is governed by the three-year Statute of Limitations

✓ Read entire page

set forth in CPLR 214, Subdivision 2, according to which plaintiff's discrimination claim is not time barred since this action was commenced on August 27, 1985. Plaintiff's claim of discrimination is not time barred under the three-year Statute even without taking in account that discovery of the discrimination occurred long after 1983.

An action based on fraud must be commenced within six years under Section 213 of the CPLR, according to which plaintiff's claim of fraud is not time barred. The fraud claim is not time barred even without taking into account that discovery of the fraud occurred long after 1983 due to defendants' concealment. Moreover, it is the rule in New York that a defendant, based on equitable estoppel, may be barred from invoking the Statute of Limitations as against a cause of action for breach of fiduciary relations in an action in which fraud, misrepresentations or deception are involved, as in the instant case. The New York Courts have so decided in countless decisions. Simcuski v. Saeli, 44 N.Y.2d 442 is illustrative of such decision.

The essence of a civil conspiracy is a combination to defraud plaintiff. A general allegation of fraud is sufficient. Conn v. Bryce, 170 N.Y.S. 95, is illustrative of such Court holding. In the instant case, each and every defendant has concealed and continues to conceal the causes of action herein. This could only have occurred by virtue of a conspiracy on the part of defendants to deprive plainti of the employment and pension benefits to which she is entitled.

The essence of the right to equal protection of the laws under Article 1, Section 11 of the New York State Bill of Rights, is that all persons be treated alike under like circumstances and conditi Unjustified discrimination violates the Constitution when certain individuals of a class are treated differently as opposed to others

Entire pg

of the same class. Scime v. County Legislature of Erie County, 395 N.Y.S.2d 952, is illustrative of the many Court holdings which proscribe denial of equal protection of the laws to all members of a group. In the instant case, plaintiff's pension and prior service were not determined according to law as were the pension and prior service of similarly situated teachers. The defendants practice this discrimination by imparting information individually to members of a large group. Even forms are distributed on an individual basis. The law for crediting prior service is imprinted on the application form of the Pension System. However, plaintiff was not given the correct form for such application which deprived her of the material information for gaining credit for prior service and which constitutes a fraudulent concealment on the part of defendants.

The foregoing claims and their viability according to the appropriate section of the Statute of Limitations are set forth as illustrations of the many claims and causes in this action, of the many issues of fact in this action, and of the many discriminatory and fraudulent acts of defendants.

There is no evidence of due process having been accorded in this action. To date, there has not been a hearing of this matter at any level. To date, plaintiff has not been given an accounting of her pension moneys. To date, plaintiff has not been given a copy of her records, as to which plaintiff has documented false information found on parts of such records concerning plaintiff's salary, service, and funds.

Erie pl

Plaintiff was deprived of her constitutional right of due process and right to trial by jury by the three orders of the Supreme Court, Kings County, which dismissed the complaint as against all of the defendants.

The orders do not respond to the ten claims which plaintiff enumerated at the beginning of this statement. The orders do not state the grounds for dismissal and do not set forth reasons or opinions.

By failing to respond, the Supreme Court Justices Shaw, Bernstein, and Hurowitz, prevent plaintiff from perfecting her appeal.

In his order, Judge Shaw does not state the nature of the action; he does not mention one cause of action; he concludes the order by stating that plaintiff's causes of action are barred by the four-month statute of limitations and the complaint is dismissed.

What does this mean? Is Judge Shaw implying or inferring that plaintiff's claims of discrimination, fraud, conspiracy, deprivation of Constitutional rights and breach of duties are all barred by the four-month statute of limitations? What is the four-month statute of limitations? What is the date of accrual? What is the event or transaction for determining accrual? Why is the four-month statute of limitations applicable to all of or any of plaintiff's claims? By this order, the many issues of fact in this action were improperly dismissed without any inquiry. Defendants' failures to respond to the issues were not considered by Judge Shaw. Defendants' fraud, misrepresentations, and concealments were not considered by the Court. Is the inference here that fraud is barred by a 4-month time limitation? Is justice served by the dismissal of a 33-page complaint containing a great many issues of fact with one quick stateme

— was stopped +/or interrupted after 1st ¶

which does not relate to the causes of action herein.

The order of Judge Hurowitz is totally devoid of the nature of the case and claims; it does not state the grounds for dismissal; it does not state the reasons for dismissal; and it does not set forth an opinion. This order merely states that the motion to dismiss is granted. No reason is given. This order deprives plaintiff of Constitutional rights of due process, of her right to a trial by jury of the issues of fact herein, and of her right to perfect an appeal. Insufficient consideration was given by the Court to the claims in this matter since the decision to dismiss was made at the end of the Special Term hearing at which the motion papers were submitted to the Court.

The order of Judge Bernstein mentions that the causes of action against Defendant Rosenberg are concealment, conspiracy, and breach of contract and fiduciary duty. However, he concludes by stating that plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

Plaintiff does not understand the import of the conclusion of Judge Bernstein. Defendant Rosenberg joined the conspiracy after plaintiff's retirement. The effect of conspiracy is to make each participant liable for the acts of each member of the conspiracy. Defendant Rosenberg concealed the claims herein and concealed plaintiff's legal rights. In addition to the fiduciary breach, he unilaterally withdrew his representation of plaintiff's case which was a breach of contract. Judge Bernstein did not respond to any of these claims. Moreover, Defendant Rosenberg joined the issues of fact in this action by service of his answer. The Court dismissed

x did not read

the issues of fact without a trial. The grounds on which Judge Bernstein dismissed the complaint are not clear. The claims against Defendant Rosenberg are set forth in the complaint. Is Judge Bernstein dismissing the complaint for failure to state a claim? The plaintiff, by this order, again is prevented from perfecting an appeal.

The New York Courts hold that the correct approach for dismissal is, initially, the sole criterion of whether the pleading states a cause of action and if from its four corners factual allegati are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail. This opinion was set forth in Guggenheimer v. Ginzberg, 43 N.Y.2d 268, for not granting dismissal for failure to state a claim.

No Court has dismissed plaintiff's claims of discrimination, fraud, concealment, deprivation of Constitutional rights, and breach of duties.

No Court has stated that plaintiff's action must be brought as an Article 78 proceeding.

No pre-trial or pre-hearing conferences have been held.

No discovery has been allowed.

No amendment of pleading has been indicated.

The Courts and the defendants do not respond to the claims herein.

Defendants' acts of discrimination, concealment, fraud, and conspiracy continue unabated. The decision in Melani v. Board of Higher Education established discrimination against females by City University and enjoined the defendant from discriminating against women. However, the discrimination continues.

In Melani, there was no consideration of a four-month Statute of Limitations; nor, any other limitation since the discrimination was a continuing one.

Further, as to the Statute of Limitations, the Courts and the defendants do not respond to the respondents' refusal to perform their duty, which refusal according to Section 217 of the CPLR is one of the dates for accrual of commencement of the action. The defendant Pension System refused to perform its duty on March 27, 1985, as evidenced by the letter from the Director of the System as of that date; the defendant Insurance Department refused to perform its duty on June 7, 1985, as evidenced by the letter from the Chief of the Life Insurance Bureau as of that date. The defendant City University refused to perform its duty on July 17, 1985, as evidenced by its communication of that date. All of these refusals are within the four-month limitation requirement of Section 217 even without considering the fraud included in the refusals and the effect of fraud on the Statute of Limitations and even without considering that the discrimination and fraud are continuing.

In view of the failure of the Courts to respond to the claims in the complaint and the failure to give sufficient consideration to the complaint, plaintiff hereby motions this Court to order the Court below to consider the causes of action and to take the appropriate judicial steps for such consideration and to allow plaintiff her Constitutional right to a trial by jury.

Moreover, as a second motion, plaintiff requests that this Court order the defendants to respond to the claims herein.

There are matters of justice and rights that are not being addressed here. The applicable law in this case

has been misrepresented or disregarded by the parties herein.

The facts herein have been misrepresented or disregarded by the parties herein.

And the responses appear to be bad faith responses.

It does not appear that the defenses have been investigated for factual and legal validity.

It appears by the total lack of response that no one is concerned that a claimant cannot retain legal counsel. And after this fact, tactics are used to take advantage of the absence of counsel.

The above statement is not intended as an all inclusive statement of the claims in this action. Unfortunately, the foregoing statement is but a small sample of the claims.

Plaintiff-appellant requests that this Court reverse the three Orders of the Kings County Supreme Court and order a trial by jury of the issues herein as Constitutionally protected.

I respectfully request the right to briefly rebut the arguments of the opposing attorneys should that be necessary.

(NOTE: ON THE BASIS OF PLAINTIFF'S RECOLLECTIONS, THIS PAPER WAS READ AS THE ORAL ARGUMENT ON APPEAL, IN THE MAIN, AS INDICATED BY THE CHECKMARKS. THE X'S INDICATE THOSE ¶S NOT READ.)

PLAINTIFF-APPELLANT'S LETTER TO APP. DIV.
RE SDHR DEFERRAL AND EEOC RIGHT TO SUE (PP. 872-874)

March 16, 1987

Supreme Court of the State of New York
Appellate Division : Second Department
45 Monroe Place
Brooklyn, NY 11201

Dear Justices Bracken, Lawrence, Kunzeman, and Spatt:

Re: Clissuras v. City of New York, et al. Nos. 3774, 3775, 3776

As plaintiff-appellant pro se, I represented myself on March 5, 1987, the day on which argument was heard in the above-entitled action.

One of the questions which was put to me concerned the status of my claim with the New York State Division of Human Rights. I responded that the State Division had waived its jurisdiction and that I then received a Notice of Right to Sue from the Equal Employment Opportunity Commission.

Since the two letters which document the waiver and the right to sue were not included in the Record on Appeal, I was not able to substantiate my response on March 5; therefore, I enclose the two letters herewith for the convenience of the Court.

If submission of the two letters is improper at this point in time, I hereby request the indulgence of the Court and further request that the letters be disregarded.

Yours very truly,

/s/

Alice Clissuras, Plaintiff-Appellant pro se
P. O. Box 1750
Brooklyn, NY 11201

Copies to: Office of the Clerk, for the files
Michael S. Adler, Office of Corporation Counsel
Robert Abrams, Attorney General
D. Nicholas Russo, Professional Staff Congress/CUNY
Bergadano, Zichello & Babchik

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

August 2, 1985

Alice E. Clissuras
215 Adams Street
Brooklyn, NY 11201

Charge No.: 021-85-4337
Re.:New York City Teachers Retire

Dear Mr. Clissuras

We have received your complaint alleging unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended. Under Section 706(d) of Title VII, your complaint cannot be filed with this Commission until a state or local agency has had at least 60 days to resolve it; therefore, your complaint has been sent by us to the New York State Division of Human Rights.

The 60-day deferral period mentioned above has been waived by the New York State Division of Human Rights, and your charge is, therefore, now under our jurisdiction and pending investigation.

Please use the above charge number in any further inquiries or correspondence.

Sincerely,

Edward Mercado

Edward Mercado
District Director

U.S. Department of Justice

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

WBR:HAG:ljt

Washington, D.C. 20530

August 9, 1985

CERTIFIED MAIL

Ms. Alice E. Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: EEOC Charges Against New York City Teachers' Retirement,
Professional Staff Congress and City University of New York
(New York City Technical College)
Nos. 021854337, 021854338 & 021854339

Dear Ms. Clissuras:

Because you filed the above charges with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate those charges within 180 days of the date the Commission assumed jurisdiction over those charges, and this Department has determined that it will not file any lawsuit based thereon within that time, and because you have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice. If you are unable to retain an attorney, the Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs, or security. In order to apply for an appointed attorney, you should, well before the expiration of the above 90-day period, take this Notice, along with any correspondence you have received from the Justice Department or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in Brooklyn.

The investigative file pertaining to your case is located in the EEOC District Office, 90 Church Street, Room 1501, New York, New York 10007.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: [signature]
Herbert A. Goldsmith, Jr.
Attorney
Employment Litigation Section

cc: EEOC District Office
New York City Teachers' Retirement
Professional Staff Congress
City University of New York (New York City Technical College)

LETTER FROM CLERK OF COURT OF APPEALS
RE SUA SPONTE INQUIRY

State of New York
Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany 12207

July 27, 1987

Ms. Alice Clissuras
P.O. Box 021750
Brooklyn, New York 11202-0038

Re: Clissuras v. City of New York, et al.

Dear Ms. Clissuras:

The Court has received your 500.2 jurisdictional statement and may examine its subject matter jurisdiction sua sponte with respect to whether a substantial constitutional questions is directly involved to support an appeal as of right (CPLR 5601[b]).

This communication is without prejudice to any motion any party may wish to make. If you conclude that the order is not appealable as of right, please arrange for the execution of a stipulation consenting to a dismissal of the appeal and transmit that paper to my office. If a stipulation is to be forthcoming, please inform me immediately.

On the other hand, if you wish to persevere in the appeal, you are invited to present to the Court in writing within ten days of this letter's date your comments justifying the retention of subject matter jurisdiction. Your adversaries are likewise afforded this opportunity.

If this sua sponte inquiry is terminated by the Court, the Clerk will notify counsel in writing and set a new schedule for normal perfecting of the appeal.

Very truly yours,

Donald M. Sheraw

Donald M. Sheraw

JPA:pk
cc: Hon. Peter L. Zimroth
Hon. Robert Abrams
D. Nicholas Russo, Esq.
Bergadano, Zichello & Babchik, Esqs.

PLAINTIFF-APPELLANT'S LETTER TO COURT OF APPEALS
RE OBJECTIONS TO SUA SPONTE INQUIRY AND CONSTITUTIONAL
BASES FOR APPEAL (PP. 876-881)

August 11, 1987

The Court of Appeals of the State of New York
Court of Appeals Hall
Albany, NY 12207

TO THE COURT OF APPEALS OF THE STATE OF NEW YORK (WACHTLER, C.J.):

Re: Clissuras v. City of New York, et al. Index No. 20522/85

By this letter, plaintiff-appellant, Alice Clissuras, is responding to the July 27, 1987, letter of the Clerk of the Court which raised the matter of the Court's sua sponte examination of its subject-matter jurisdiction in the above-entitled action as to the involvement of substantial constitutional questions.

Plaintiff-appellant strongly objects to the raising of this question in view of the fact that she has been deprived of all of her constitutional rights regarding the matters in issue herein by the actions of all of the defendants, all of the governmental agencies, and all of the Courts. See Record on Appeal and Appellate Briefs which are enclosed. The deprivations of constitutional rights are clearly evident in said papers, which deprivations are completely documented therein by plaintiff-appellant, are totally uncontroverted by the defendants-respondents, and are not addressed or considered by the Courts.

Plaintiff-appellant has been discriminated against on the bases of her sex and religion by her employer (Board of Higher Education, City University, New York City Technical College) during the entire period of her employment of 34 years and the discrimination continues to date. In her 33-page complaint, the pivotal cause of action, among the many causes of action, is the employment discrimination (Rec. on Ap., pp. 69-101). Not one of the four orders of the Supreme Court, Kings County, and Appellate Division, Second Department, dismissing the complaint, even mentions employment discrimination (Rec. on Ap., pp. 9-12, 19-21, 29-30, and enclosed Decision & Order of App. Div., 2d Dept.).

In Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983), the Court found that plaintiff-appellant's employer, Board of Higher Education, discriminated against females. This decision covered the entire period of plaintiff-appellant's employment and beyond (Rec. on Ap., pp. 201-204).

In the instant case, the Courts dismissed the complaint on the ground of a 4-month time limitation; this was done without any consideration of the claim of discrimination, without consideration of defendants-respondents' failure to respond to said claim, without consideration of the statutorily provided limitation period for discrimination, and without consideration of plaintiff-appellant's discovery of the fraud by which the discrimination had been concealed. Applying a 4-month limitation period to discrimination is unconstitutional and unlawful. In Melanie, since the discrimination was and is a continuing wrong, there was no time limitation. Plaintiff-appellant is a member of the Melanie class and subject to the discrimination of the Board of Higher Education, one of the defendants-respondents herein.

It is not clear to plaintiff-appellant whether the Appellate Division, Second Department, did, in fact, dismiss the employment discrimination claim, since the cause of action is not mentioned in the Order and the Order is unsigned.

Further, the Appellate Division, Second Department, in its Order affirming dismissal of the complaint, did not address and did not respond to the 20 questions presented for review in plaintiff-appellant's brief, pp. 3-4. Said 20 questions involve constitutional questions and deprivations to which the Supreme Court, Kings County, also did not give due consideration and did not respond in the three Orders by which Kings County dismissed the complaint as against all of the defendants-respondents.

By all of the actions of the defendants-respondents, the governmental agencies, and the Courts herein, plaintiff-appellant has been deprived of her constitutional rights, as follows:

1. Deprivation of Constitutional Right to Equal Protection and Application of the Laws

   Documentation of the discriminatory and fraudulent application of the New York State Pension Laws to plaintiff-appellant is found on pp. 344-349 and 608 of the Record on Appeal.

   Documentation of the discriminatory and fraudulent application of the New York State Retirement and Social Security Law to plaintiff-appellant's service is found on pp. 359-369 of the Record on Appeal.

   No defendant-respondent has responded to and no defendant-respondent has controverted said pension and service discriminatory and fraudulent acts. Not one piece of evidence

has been produced to disprove plaintiff-appellant's documented claims. The discriminatory and fraudulent pension and service have not even been mentioned and have not been counterargued.

2. Deprivation of Constitutional Right to Trial by Jury

No public agency and no court has held a hearing and there has been no trial to date of the issues of fact and of the claims of employment discrimination, fraud, conspiracy, breach of contract, breach of fiduciary duty, and deprivation of constitutional rights.

The defendants-respondents have not answered and have not in any way controverted the above claims. This should have resulted in a decision in favor of plaintiff-appellant on the ground that there is no triable issue when defendants have no response to the causes of action.

The Courts herein dismissed the many issues of facts and all of the above-mentioned claims which includes fraud, without a hearing and without a trial on the ground of a 4-month time limitation. There is no court decision that supports dismissal of discrimination, fraud, conspiracy, breach of contract, breach of fiduciary duty, and constitutional deprivations, on the ground of a 4-month time limitation; so to hold is unconstitutional and unlawful.

3. Deprivation of Constitutional Right to Due Process

There has been no hearing and investigation of the claim of discrimination which was effected fraudulently.

The Courts did not give any consideration to the claim of fraud and its effect on accrual of cause of action.

The Courts did not specifically state the accrual times and causes.

The Courts did not give any consideration to defendants-respondents' reliance on fraudulent papers and use of altered evidence.

The Court Orders are defective in that the nature of the action is not correctly stated, in that most of the causes of action are not mentioned, and in that no opinions and reasons for dismissal are set forth. This deprives plaintiff-appellant of her constitutional right to counterargue and to perfect her appeal.

Defendants-respondents have refused to provide a copy of plaintiff-appellant's records, in violation of law. This act is a continuance of the fraudulent concealment involved herein.

Only one record of Special Term is available; two Special Term proceedings were not on the record; and plaintiff cannot obtain any information as to the record for Appellate Division. The Courts of record herein deprive plaintiff of her constitutional rights and her right to perfect appeal.

4. Deprivation of Constitutional Right to Counsel

Plaintiff-appellant has been prevented from retaining legal counsel and gaining needed pension and legal information by a conspiracy of the defendants-respondents. The Courts have not addressed this deprivation and have not extended their protection to the forced pro se status of plaintiff-appellant.

The above claims and acts within each category are set forth as illustrations of the points being made and are not intended as a complete enumeration of the constitutional claims and wrongs herein.

In view of the countless constitutional deprivations of plaintiff's rights as set forth in the Jurisdictional Statement and more fully above, it is improper for the Clerk of this Court to raise a sua sponte inquiry in this action as to subject matter jurisdiction. It appears that such inquiry would constitute an additional constitutional deprivation should it continue.

It also appears that the proper questions which should have been raised at this point are: why has plaintiff been deprived of all of her constitutional rights and the equal application and protection of the laws; why is plaintiff being deprived of her inviolate constitutional right to trial of the many causes herein; why are documented claims of discrimination and fraud dismissed without an inquiry or investigation and without requiring the defendants to make any response to such claims; why are documented claims of discrimination and fraud, among the many claims, dismissed without even

being mentioned in Court Orders of dismissal; why do the Courts not consider the statutorily provided limitation periods for plaintiff-appellant's claims, not one of which is subject to a 4-month time limitation; why are plaintiff-appellant's discriminatory and fraudulent pension and service claims dismissed when no one has stated what the pension for plaintiff-appellant's years of service should be; why do the Courts dismiss a 33-page complaint without stating the causes of action, reasons for dismissal, and opinion; how valid is an unsigned Court Order; why is a complaint dismissed when the defendants-appellants do not address any of the claims and do not submit any documentation to support their motions for dismissal other than fraudulent documents and altered documents; why are the defendants-respondents not required to substantiate their motions for dismissal; why were the many issues of fact in the complaint dismissed without a trial; and why are tactics used to overcome a valid complaint after the plaintiff has been conspiratorily deprived of retaining counsel.

The claims are not addressed; the defendants-respondents do not respond to the claims; the Courts do not show evidence of due consideration of the claims; and the complaint is dismissed. Plaintiff-appellant has not been afforded even one constitutional and legal right. The Clerk's sua sponte inquiry in the face of all of this constitutes another constitutional deprivation and should be terminated. Plaintiff-appellant should be allowed to perfect appeal to the Court of Appeals.

The interests of the Constitution, justice, and law demand that plaintiff-appellant be allowed her day in court. The constitutional rights are inviolate and plaintiff-appellant is entitled to her constitutional and legal rights regardless of sex and religion. The many wrongs, injustices, and abuses, herein demand remedy according to the constitution and the laws.

Very truly yours,

/S/

Alice Clissuras, Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038

Enclosures:

Decision and Order (one paper) of the Appellate Division, Second Department

Plaintiff-Appellant's Brief

City University Defendants-Respondents' Brief

Brief for Defendant-Respondent Professional Staff Congress/CUNY

Brief for Defendant-Respondent Lewis Rosenberg

Plaintiff-Appellant's Reply Brief

Brief for Respondents City of New York, Teachers' Retirement Board, and Teachers' Retirement System

Plaintiff-Appellant's Reply Brief Responding to Brief for City Defendants-Respondents

Record on Appeal

ATTESTATION OF SERVICE

Alice Clissuras hereby attests that she mailed a copy of this letter to each of the opposing attorneys on August 11, 1987.

The enclosures were not included in the mailing to the attorneys since all of the papers included in the enclosures are in their possession. Should there be a need, copies will be mailed upon request.

/s/
Alice Clissuras

cc: Hon. Peter L. Zimroth
Hon. Robert Abrams
D. Nicholas Russo, Esq.
Bergadano, Zichello & Babchik, Esqs.

LETTER OF STATE DEFENDANTS-RESPONDENTS ARGUING NO BASIS FOR APPEAL (PP. 882-883)

STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271
(212) 341-2641

ROBERT ABRAMS
Attorney General

August 18, 1987

Hon. Donald Sheraw
Clerk
Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Clissuras v. City of New York, et al.

Dear Mr. Sheraw:

This letter is submitted on behalf of respondents Board of Higher Education, City University of New York, New York City Technical College and the Department of Insurance in response to the Court's letter of July 27, 1987. The Court asked for comment on whether a substantial constitutional question is involved in the above referenced case so as to support an appeal as of right.

The appellant commenced this pro se action challenging the amount of her pension benefits almost three years after her retirement from respondent Technical College. The complaint alleges, inter alia, employment discrimination, fraud, conspiracy, gross negligence and the deprivation of her constitutional rights of equal protection and due process. Appellant also filed an identical complaint in the United States District Court for the Eastern District of New York. Chief Judge Weinstein dismissed the complaint on the grounds that the claims were time-barred and that no constitutional violation existed. The Second Circuit Court of Appeals affirmed the decision and the Supreme Court denied appellant's petition for a writ of certiorari. Clissuras v. City of New York Teachers' Retirement Board, et al., 107 S. Ct. 405 (1986).

Although appellant raises constitutional questions, her claims are, in fact, frivolous. Indeed, it is clear from the face of the jurisdictional statement that appellant cannot take an appeal as of right. The Appellate Division unanimously

held that the complaint against the above-named respondents was time barred because it was not filed within the four month statute of limitations applicable to Article 78 proceedings. Such a decision provides no basis for an appeal as of right to this Court. See CPLR 5601.

Very truly yours,

ANNE EHRENKRANZ
Assistant Attorney General

AE:rf
cc: Alice Clissuras
P.O. Box 021750
Brooklyn, N.Y. 11202

Michael S. Adler, Esq.
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007

D. Nicholas Russo, Esq.
Professional Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036

Ann Theresa McIntyre, Esq.
Bergadano, Zichello & Babchik
420 Lexington Avenue
New York, New York 10170

LETTER OF UNION ATTORNEY DEFENDANT ARGUING NO BASIS FOR APPEAL

BERGADANO, ZICHELLO & BABCHIK
ATTORNEYS AT LAW

THE GRAYBAR BUILDING
420 LEXINGTON AVENUE
NEW YORK, N Y 10170

TELEPHONE (212) 972-5560
TELECOPIER (212) 972-5569

August 20, 1987

Honorable Donald Sheraw
Clerk
Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Clissuras v. City of New York, et al.

Dear Mr. Sheraw:

This letter is submitted on behalf of the respondent Louis Rosenberg in response to the court's letter of July 27, 1987, and the appellant's letter of August 11, 1987.

We are also in receipt of a letter dated August 18, 1987 from the State of New York, Department of Law on behalf of the respondents Board of Higher Education, City University of New York, New York City Technical College and the Department of Insurance. We are in agreement with the statements made in that letter on behalf of those respondents. It is clear that although the appellant may raise constitutional questions, her claims are frivolous. Appellant has no basis for an appeal as of right as the complaint was dismissed as time barred as is was not followed within the four month statute of limitations applicable to Article 78 proceedings, and appellant therefore has no basis for an appeal as of right to the Court of Appeals under CPLR 5601.

Very truly yours,

Ann Teresa McIntyre

ATM/H13;jd
cc: Alice Clissuras
Michael S. Adler, Esq.
D. Nicholas Russo, Esq.
Anne Ehrenkranz

LETTER FROM PLAINTIFF-APPELLANT REPLYING TO ARGUMENTS OF DEFENDANTS-RESPONDENTS RE CONSTITUTIONAL BASIS FOR APPEAL (PP. 885-887)

August 28, 1987

Hon. Donald Sheraw, Clerk
Court of Appeals of the State of New York
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

Dear Mr. Sheraw:

Re: Clissuras v. City of New York, et al. Index No. 20522/85

By this letter, plaintiff-appellant, Alice Clissuras, makes a brief reply to the August 18, 1987, letter of the Attorney General of the State of New York, by Anne Ehrenkranz, A.A.G., attorney for the City University defendants-respondents and the Department of Insurance defendant-respondent herein. In said letter of August 18, Attorney Ehrenkranz set forth comments on the plaintiff-appellant's right to appeal to this Court, which comments were supported by Attorney Ann Teresa McIntyre of Bergadano, Zichello & Babchik, attorneys for defendant-respondent Rosenberg, in the August 20, 1987, letter to this Court from Attorney McIntyre.

The letters of Attorneys Ehrenkranz and McIntyre are classic illustrations of the failure of all the parties herein and their attorneys to respond to any of the claims herein.

In order to determine which limitation prescribed by law applies to particular claims, each claim must be examined and identified as to the facts out of which the claim arises and the relief sought; thus, it can then be determined which statute of limitations governs each cause of action. This was patently not done for plaintiff-appellant's claims.

Attorney Ehrenkranz states in her letter, "The Appellate Division unanimously held that the complaint against the above-named respondents was time barred because it was not filed within the four month statute of limitations applicable to Article 78 proceedings." Attorney McIntyre echoed this statement. No one states the wrong from which the four months would begin to count.

Plaintiff-appellant's discriminatory and fraudulent pension was concealed from her by all of the defendants-appellants herein until July, 1985, when plaintiff-appellant received a communication from

City University which certified plaintiff-appellant's City service as a total of 29 years instead of the 34 years which she served. This was the first moment that plaintiff-appellant discovered that her pension had been discriminatorily and fraudulently calculated for 29 years. No one responds to this. Plaintiff-appellant documents this in the Record on Appeal, p. 482. This has not been controverted by any defendant.

At the point of retirement, the Retirement System gave plaintiff a discriminatory and fraudulent explanation of the pension (Rec. on Ap., p. 214). Not one defendant revealed the fraud therein. The Corporation Counsel, by Michael Adler, A.C.C., attorney for the City defendants-respondents, relied on the fraudulent letter on p. 214 in his brief and in his oral argument in Appellate Division. Plaintiff-appellant brought the fraud contained in said letter to the attention of the Court. In addition to the fraud, this letter shows that the plaintiff was not aware of the discriminatory and fraudulent amount of her pension at that point. The discovery came much later in July, 1985, and this action was commenced in August, 1985.

The application of a four-month limitation to the causes of action herein is unconstitutional. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981). Further, there is a total failure on the part of all concerned to consider documented fraud and its concealment and the effect of fraud and concealment on the limitations applicable to the concealed causes.

City University has discriminated against plaintiff for 34 years of employment and has not applied the laws equally to plaintiff as Constitutionally required. City University will not give plaintiff a copy of her employment record. City University, in addition to using fraudulent communications, used an altered letter as evidence in its Supreme Court papers (Rec. on Ap., pp. 509-510, 541-542 ¶f, and 554).

Attorney Ehrenkranz did not make any oral argument in Appellate Division. She did not respond to and she did not controvert plaintiff-appellant's documented City University fraud and alteration.

Attorney Ehrenkranz goes on to state in her letter, "Although appellant raises constitutional questions, her claims are, in fact, frivolous." Attorney McIntyre echoed this statement in her letter. It is a sad commentary to find that the only response the attorneys can make to a deprivation of constitutional rights is "frivolous." However, that does not respond to the deprivations. No where can a response be found.

The attorneys claim that Appellate Division held that the complaint was time barred on the basis of a four-month limitation. Plaintiff has not received an order that has been signed by the Appellate Division (Bracken, J.P., Lawrence, Kunzeman, and Spatt, JJ.). Plaintiff received an unsigned order from the Law Department of the City of New York and it appears that the order was prepared by that office. Plaintiff has not received a signed order from the Court, to date.

Plaintiff's action is replete with Constitutional deprivations, especially in due process rights. Plaintiff has been deprived of her civil rights and right of equal protection of the laws without a hearing. Plaintiff has been deprived of her constitutional right to a trial by jury. The many issues of fact herein were dismissed unconstitutionally without a trial.

After over 30 attempts, plaintiff could not retain counsel which is another constitutional deprivation. No one even mentions this. Moreover tactics are used by all to take advantage of plaintiff's limited legal background.

The letters of Attorneys Ehrenkranz and McIntyre simply refer to all of the claims of Constitutional deprivations as "frivolous." It appears that the function of "frivolous" is to be used when there is no response.

Constitutional rights are inviolate. Plaintiff has many constitutional bases for an appeal as of right to this Court. An examination of the Record and Briefs clearly shows this and clearly shows the failure on the part of all concerned to respond to the claims herein.

Very truly yours,

/s/

Alice Clissuras
Plaintiff-Appellant, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038

cc: Hon. Peter L. Zimroth, Corporation Counsel (M. Adler, A.C.C.)
Hon. Robert Abrams, Attorney General (A. Ehrenkranz, A.A.G.)
D. Nicholas Russo, Esq., Professional Staff Congress/CUNY
Bergadano, Zichello & Babchik, Esqs. (A. McIntyre, Esq.)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

UNSIGNED DECISION DENYING TO PLAINTIFF DOCKET, ACCESS TO FILE, TRANSCRIPT AND SIGNED DECISION OF APP. DIV.

0867K
B/nl

Dated - Sept. 22, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

Motion No. 5737

DECISION & ORDER ON MOTION

Alice Clissuras, appellant, v
City of New York, et al.,
respondents.

Motion by appellant for a direction that the following documents be furnished to the appellant (1) a copy of the decision and order of this court dated June 22, 1987, signed by the Justices who presided on the appeals from several orders and a judgment, (2) the file for this action on this case maintained by the Clerk of this court (3) the docket for this appeal and (4) the transcript of the proceedings had in this court on the hearing of the appeals on March 5, 1987.

Upon the papers filed in support of the motion and no papers having been filed in opposition thereto, it is

ORDERED that the motion is granted to the extent that the clerk of this court is directed to transmit a certified copy of the decision/order of this court dated June 22, 1987, by United States Regular Mail; and it is further,

ORDERED that the motion is denied in all other respects.

This court does not maintain the file upon the determination of an appeal. The file is returned to the court below as a part of the remittitur. This court does not require that a transcript be made of proceeding upon the oral argument of an appeal.

ENTER:

MARTIN H. BROWNSTEIN
Clerk

PLAINTIFF-APPELLANT'S MOTION FOR RECORDS AND AFFIDAVIT IN SUPPORT (PP. 889-893)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, :

Defendants-Respondents. :

- x

NOTICE OF MOTION FOR RECORDS AND DOCUMENTS OF ENTITLEMENT

RECEIVED
JUL 14 4 05 PM '87
APPELLATE DIVISION
SECOND DEPARTMENT

S I R S:

PLEASE TAKE NOTICE that, upon the affidavit in support attached hereto, plaintiff-appellant, Alice Clissuras, will move this Court at a Special Term of the Appellate Division, Second Department, of the Supreme Court of the State of New York, at 9:30 a.m., on the 31st day of July, 1987, or on the earliest available date fixed by the Clerk of the Court, for an order directing that the following records and documents of entitlement be provided and made available to plaintiff-appellant:

1. A copy of the Decision and Order (one paper), dated June 22, 1987, signed by Justices Bracken,

Lawrence, Kunzeman, and Spatt. A signed Decision and Order of this Court has not been received by plaintiff-appellant to date. An unsigned Decision and Order was mailed to plaintiff-appellant in an envelope which bore the return address of the Law Department of the City of New York, which unsigned Decision and Order affirmed the three orders of the Supreme Court, Kings County (Shaw, Bernstein, and Hurowitz, JJ.).

2. The file for this action, Clissuras v. City of New York, et al., maintained by the Clerk of Appellate Division, Second Department. To date, plaintiff-appellant has not been allowed access to the file. Further, plaintiff-appellant has not been informed of the file number for this action;

3. The docket for this action, maintained by the Clerk of Appellate Division, Second Department; and

4. The transcript of the March 5, 1987, proceedings at which the causes of this action were argued on appeal;

And for such other and further relief as to the Court may seem just and proper.

Dated: July 14, 1987.

Yours, etc.,

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

TO:

Attorneys for Defendants-Respondents
(Names, addresses and telephone
numbers appear on the next page
following this page.)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, : AFFIDAVIT IN SUPPORT OF MOTION FOR RECORDS AND DOCUMENTS OF ENTITLEMENT

Defendants-Respondents.:

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

ALICE CLISSURAS attests and says:

1. That she is the plaintiff-appellant in the above-entitled action.

2. That three orders were entered in the office of the Clerk of the Supreme Court, County of Kings, Index No. 20522/85, dismissing the complaint as against all of the defendants herein.

3. That plaintiff-appellant appealed to this Court on full record and the argument of the causes herein was heard on

March 5, 1987, before Presiding Justice Bracken, Justices Lawrence, Kunzeman, and Spatt.

4. An unsigned Decision and Order (one paper), dated June 22, 1987, was mailed to plaintiff-appellant by the Law Department of the City of New York. Plaintiff-appellant has not received a signed Decision and Order to date. The fee for this was paid by plaintiff-appellant in advance to the Clerk of this Court.

5. Plaintiff-appellant has not been informed to date of any settlement proceedings as to said Decision and Order.

6. A file number has not been assigned to this action and plaintiff-appellant has not been allowed to view the file to date.

7. Plaintiff-appellant has not been able to obtain a copy of the docket for this action.

8. Plaintiff-appellant has not been able to obtain information as to the transcript of the March 5, 1987, proceedings at which the causes herein were argued on appeal.

WHEREFORE, plaintiff-appellant respectfully requests that this Court order and direct:

a. That plaintiff-appellant be informed of the settlement proceedings in the event that the unsigned paper prepared by the Law Department is a proposed Decision and Order; a copy of the unsigned paper is attached at the end hereof;

b. That a signed Decision and Order be provided to plaintiff-appellant in this action;

c. That plaintiff-appellant be apprised of the file number and be allowed to view the file in this action;

d. That a copy of the complete docket be supplied to plaintiff-appellant; and

e. That plaintiff-appellant be informed as to how to obtain a copy of the transcript of the March 5, 1987, proceedings.

Plaintiff-appellant is entitled to each of the items in a - e above by right and by law. Deprivation of the items deprives plaintiff-appellant of her Constitutional due process rights and specifically of her right to perfect an appeal.

/s/

ALICE CLISSURAS

Attested to before me this
14th day of July, 1987

/s/ Robert Falk No. 31-1155135

Mo. No. 1166 SSD 74

Alice Clissuras,
Appellant,

vs.

City of New York, et al.,
Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

DECISION COURT OF APPEALS OCT 13 1977

ABOVE PIECE OF PAPER IS COPY OF COURT OF APPEALS DISMISSAL OF PLAINTIFF-APPELLANT'S APPEAL

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ~~thirteenth~~ *day of* October *A. D. 19*87

Present, HON. SOL WACHTLER, *Chief Judge, presiding.*

Mo. No. 1166 SSD 74

Alice Clissuras,
Appellant,

vs.

City of New York, et al.,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Donald M. Sheraw

Donald M. Sheraw
Clerk of the Court

PLAINTIFF-APPELLANT'S NOTICE OF APPEAL TO SUPREME COURT OF THE UNITED STATES (PP. 896-900)

STATE OF NEW YORK
COURT OF APPEALS

- -x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

Ct. of Ap. Mo.No.1166SSD74

App.Div.2d Nos.3774E-3776E

Kings County Clerk's Index No.20522/85

- -x

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alice Clissuras, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States, from an order of the Court of Appeals of the State of New York, dismissing appeal, entered October 13, 1987, and from all orders of the Courts below relevant thereto.

This appeal is taken pursuant to U. S. Const., Amend. I, Amend. IV, Amend. V, and Amend. VII; N.Y.S. Const., Art. I, §2,

§8, and §11; Deprivation of Constitutional Rights of Due Process, Trial, Counsel, Speech, and Equal Protection of Laws.

DATED: November 2, 1987.

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

I, ALICE CLISSURAS, attest and say that I am the appellant, pro se herein, and that on November 2, 1987, pursuant to Rule 28 of the Rules of the Supreme Court, I served a copy of the foregoing Notice of Appeal on each of the parties required to be served herein, as follows:

On the City of New York, Teachers' Retirement System of the City of New York, and Teachers' Retirement Board of the City of New York, the City Defendants-Respondents herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Michael Adler, Esq., Assistant Corporation Counsel, of record for said City Defendants-Respondents, at the office of Peter L. Zimroth, Esq., Corporation Counsel of the City of New York, 100 Church Street, New York, NY 10007.

On the Board of Higher Education of the City of New York, City University of New York, and New York City Technical College, the City University Defendants-Respondents herein, and on the Department of Insurance of the State of New York, defendant-respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Anne Ehrenkranz, Esq., Assistant Attorney General, of record for said City University Defendants-Respondents and the Department of

Insurance Defendant-Respondent, at the office of Robert Abrams, Esq., Attorney General of the State of New York, Two World Trade Center, New York, NY 10047.

On the Professional Staff Congress/CUNY, the Union Defendant-Respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to D. Nicholas Russo, Esq., attorney for said Union Defendant-Respondent, at the Union's office at 25 West 43d Street, New York, NY 10036.

On Lewis Rosenberg, the Union Attorney Defendant-Respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Ann McIntyre, Esq., counsel of record for said Union Attorney Defendant-Respondent, at the office of Bergadano, Zichello, & Babchik, Esqs., 420 Lexington Avenue, New York, NY 10170.

All parties required to be served have been served.

I further attest and say that on November 2, 1987, the Notice of Appeal was mailed, by registered mail, to the Court of Appeals of the State of New York, Albany, NY 12207; a duplicate original was mailed to the Supreme Court of the United States, by registered mail, Washington, D.C. 20543; and a duplicate original was hand delivered to the Supreme Court of the State of New York, County of Kings, Brooklyn, NY 10201.

/S/

ALICE CLISSURAS

Subscribed and attested to
before me this 2d day of
November, 1987.

/S/

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

Index No. 20522/85 Year 19

STATE OF NEW YORK
COURT OF APPEALS

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

ALICE CLISSURAS
Plaintiff-Appellant, pro se
~~XXXXXXXXX~~

Office and Post Office Address, Telephone

P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

To

Attorney(s) for Defendants-Respondents

Service of a copy of the within

is hereby admitted

Dated,

FILED
1981 NOV -2 PM 2:17
KINGS COUNTY CLERK

REC. ON AP., P. 900

COURT OF APPEALS
STATE OF NEW YORK

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- : CERTIFICATION OF RECORD

CITY OF NEW YORK, et al., :

Defendants-Appellees. :

- x

ALICE CLISSURAS, plaintiff-appellant, pro se, does hereby certify pursuant to §2105 of the Civil Practice Law and Rules to the correction of all the papers constituting the Record on Appeal.

/S/

ALICE CLISSURAS
Plaintiff-Appellant, pro se